PUBLIC BROADCASTING REFORM ACT OF 1998

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE, AND CONSUMER PROTECTION

OF THE

COMMITTEE ON COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

ON

H.R. 4067

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THE PUBLIC BROADCASTING REFORM ACT OF 1998

MONDAY, OCTOBER 5, 1998

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:20 a.m., in room 2123, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Markey, and Wynn.

Staff present: Justin Lilley, majority counsel; Mike O'Rielly, professional staff; Cliff Riccio, legislative clerk; and Andy Levin, minority counsel.

Mr. TAUZIN. The subcommittee will please come to order.

Let me thank you for joining us today, or me today to speak with me about this important legislation. And let me thank you, my good friend and colleague, Ed Markey, from Massachusetts, the principal cosponsor. It should be quite obvious to you that not only is this a bipartisan issue, to many of us, but as you can see the bill we have offered today that we are going to hear testimony on today is a bipartisan offering by both the chairman and the ranking minority member.

And we have offered it in the spirit of accomplishing something good for the country, as is so much of the work of this committee done in a bipartisan fashion. And it is also a critical time for public broadcasting, not only because we are, of course, approaching a new century and the end of a third decade in public broadcasting. But as I say, there are two fundamental issues that need to be addressed simultaneously; one is providing public broadcasting with a long-term and stable method of funding. Public broadcasting today in the analog world lacks that public, stable, long-term method of funding. And the other is a recognition that as public broadcasting, broadcasting in general, moves from the analog to the digital era it is essential that we maximize efficiencies and act with some fiscal discipline.

For example, in this time of budgetary austerity, we really have to question the need for two fully funded public stations for the market, and we need to talk about that, how can we somehow bring efficiencies in that market in a digital age when, in fact, multicasting may be a more appropriate way of providing more public broadcasting to a community.

Similarly, we need to take a hard look at the bureaucracy of the Corporation for Public Broadcasting. H.R. 4067, the Public Broadcasting Reform Act of 1998, seeks in fact to accomplish these goals. First, the bill would create a commission to consider various methods to provide financial assistance to public broadcasting and to promote the transition of public broadcasting into the digital era, including replacing the Federal appropriations for the CPB by creating a trust fund for the stable funding of public broadcasting; reducing Federal spending for public broadcasting by eliminating the CPB possibly by limiting Federal assistance to one broadcast licensee per market or by selling or leasing overlapping broadcast stations, ensuring that government money invested in the station over time is returned to the Federal Government for reinvestment in other stations; by creating a fee for exception from public interests broadcasting requirements.

Broadcasters in effect would then buy out through public interest payments, which then would be used to support public broadcasting which, in turn, would provide the public service that was originally allocated to a commercial broadcaster. Carrying out the goals of public broadasting by, one, ensuring that public broadcasting remains as free as possible from commercial advertising, so it remains something special in our society; encouraging locally produced programming, a critical ingredient; three, enhancing the availability of cultural programming for historically underserved audiences, including minority audiences; four, enhancing the availability of educational programming designed for children; five, making cultural and education programming available to schools and libraries; and, five, reducing simultaneously broadasting of identical programming, allowing the showing, for example, of five Barneys at the very same time and at the community.

It is my hope this commission will offer insightful and interesting information on how we can extend the valuable mission of public broadcasting into the next century. Indeed, all of these options would be before the committee, as well as any other option that the commission would feel might be one we have not yet even thought of.

Second, the bill establishes a mechanism to recompense the Federal Government for the sale of public broadcasting stations which were sold to private entities. The bill requires that the FCC ensure that these stations are sold at fair value, and the Federal Government is recompensed with the investment that it has made in these public broadcasting stations. And, third, the bill makes some small modifications to the current law's provisions for local grants.

The bill limits these messages to 10 seconds in duration and provides the sponsors to be identified without further commercial messages, provides that these local grants are to be discontinued once a trust fund or a mechanism is in place which provides for more than 70 percent of the annual operating expenses of each public broadcasting station.

In short, the bill aims at making public broadcasting public and not commercial. And finally the bill authorizes the CPB through t fiscal year 2002 at an amount equal to 40 percent of the total nount of non-Federal financial support received by public broadters but not to exceed $475 million per year.

The bill also authorizes appropriation for PTFP for the years 1999 through 2000 in the amount of $42 million. By the way, this is the same amount which is currently funded. The last time that Public Broadcasting was reauthorized was for fiscal year 1996 at $425 million. We are authorizing this bill, CPB, at an increased level because we value public broadcasting. We believe the Congress values public broadcasting. We believe the public values public broadcasting. We believe all respect its mission to remain public and noncommercial.

This year CPB received an appropriation of $325 million, just as a note. Perhaps even more important than the reauthorization features of this act is the bill's appropriation of funds for the purchase of equipment for the transition to digital television in the amount of $95 million per year through 2002. This is the equivalent of $475 million over 5 years. Remember the President's budget allocated about $450 million to the transition over the same 5-year period.

As broadcasting moves from the analog to the digital era, we must not let public broadcasting be left behind. Americans are going to be making some big choices in the next few years and among those big choices will be the purchase of new digital sets and digital converter boxes. And there will be seemingly credible variety and incredible scope of digital and high definition programming. Public broadcasting has to be part of that adventure.

To that end it is similarly essential for public broadcasting to maximize efficiencies, where possible. The bill, therefore, provides that the money authorized to be appropriated for the transition may be used to purchase equipment on a collaborative basis to enable more than one station to benefit from cost savings realized from the joint purchase of equipment.

The bill does not, however, mandate the stations purchase equipment on such a collaborative basis. Second, the bill contains incentives for public broadcasters to consolidate their operations for the transition to digital. The bill provides that where two public entities voluntarily agree to merge, the combined entities will receive 150 percent of the funds that either one of them would have received as a single entity.

Finally, to ensure that the needs of public broadcasting and the community they serve are met, the bill permits public broadcasters to multiplex to provide more programming to more people. It is time for Congress to show its commitment to public broadcasting and to the digital future of public broadcasting. As we move to the next century, we must ensure that public broadcasting moves with us and we must provide it with funds to do so, but also the guidance to guarantee its longtime success by maximizing efficiencies and exercising fiscal restraint.

I want to emphasize that I believe that the long-term success of public broadcasting is very much dependent upon its reform. It is also essential that public broadcasting be reauthorized. Unfortunately, despite our best efforts and the efforts of public broadcasting we were, of course, not able to move a bill this year. And we recognize that important funding questions need to be addressed in order to get the public broadcasters a certainty necessary to move into the next century. Accordingly, I look forward to moving this bill early in the next Congress.

Let me finally say that the reason we have asked you to come today is, and very simply, that you might share with us your thoughts on our draft, might criticize it, analyze it, offer us suggestions for improvements, tell us what you like about it, what you don't like about it, that we might use this interim to consider those suggestions and criticisms and, perhaps as early as we can in the next Congress produce a reformed—a revision, rather, a revised draft that will in fact incorporate the best of the ideas and avoid the worst of the mistakes we may have made.

And let me finally say that Mr. Markey and I have made very much of a commitment to this bill. Our staff and I and Mr. Markey have given it a lot of attention, I believe you know that. I want to thank our staff. Justin is here and I want to thank him and my personal staff. And Mr. Markey's staff, Andy is here. I want to thank all of them for the time they spent already on this bill. We intend to invest a lot more time to get it done early in the next Congress, but we are going to need your help. And to all the friends of public broadcasting who may be listening or may be here today, let me assure you this will take a major effort in the next Congress.

I don't have to tell you we will be competing for attention on a rather strange stage. And I will need as much of your help to make sure this becomes a priority of the next Congress as I possibly can, and that means working with all the members of the full Commerce Committee to ensure that all of them see it as a high priority for the next Congress.

The Chair now is pleased to welcome my friend Mr. Wynn from Maryland for an opening statement.

Mr. WYNN. Thank you very much, Mr. Chairman. I would just like to take this opportunity to commend you for your leadership on this issue as well as that of our ranking member, Mr. Markey. In the interest of time, I am going to defer any opening statement and let's proceed with the witnesses. Thank you.

Mr. TAUZIN. Thank you, Mr. Wynn.

I also want to issue on behalf of Mr. Markey an apology for his being late. He does have a stimulating statement which we will by unanimous agreement insert into the record. My own personal observation is that he is still in deep mourning over the Red Sox loss. They were in the American League playoffs, and I know he is probably not going to be seeing very straight this morning. So he will take his time getting here.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Thank you, Mr. Chairman.

Public broadcasting is a staple of many people's daily television viewing. The programming offered by public broadcasting is often unique, educational and well received by many Americans. Programming by public broadcasting also travels in directions that the private broadcasting companies are unwilling to go.

I think everyone agrees that the programming options offered by public broadcasting should be continued. I have always been a strong supporter of public broadcasting.

Unfortunately, while the concept of public broadcasting is sound, there are many problems in the current system. And this is not surprising, given that it has operated without significant revision since its creation. Excessive overhead costs, as well as biased and redundant programming, plague public broadcasting. Clearly, there is room for improvement.

Further, it is widely recognized that public broadcasting cannot be sustained under the current funding mechanisms and levels. The Federal government's role in funding public broadcasting must be lessened. Simply put, federal dollars are needed in other more worthy areas. I am heartened to see that even as federal funding has been trimmed, the overall budgets of public broadcasting organizations are growing nicely.

Public broadcasting also is facing one of its most daunting challenges to date: conversion from analog to digital transmission. As private broadcasters convert to digital, so will public broadcasters. This is a complex process that will provide as much benefit and opportunity as it does uncertainty. While I am suspect of the contribution levels public broadcasting expects the government to provide for the conversion, digital transmission provides the opportunity—if done right—to bring a whole new flock of viewers and contributors to public broadcasting.

For these reasons, I am pleased to see the legislative work of our Subcommittee Chairman. The bill before us asks the important questions facing public broadcasting. H.R. 4067 outlines the formation of a commission of experts to provide answers to these most pressing issues. It also explores efforts at eliminating the needless redundancy contained in the system.

While H.R. 4067 is certainly a positive starting point, I think everyone agrees there is hard work ahead. There are parts of the bill—such as the generous funding levels—that need substantial work. Today's hearing will provide a basis for improving the legislation and moving the ball forward.

I must admit that I am troubled by the lack of balance contained on this panel. We have four witnesses that strongly favor the current public broadcasting structure. While these witnesses may have concerns about certain parts of H.R. 4067, it certainly seems as though we will be missing testimony from witnesses who may have more serious and fundamentally different problems with the bill.

To be balanced, we should hear all views regarding the bill. I trust that this will occur as further hearings are held on this matter.

Let me also be frank with my friends in the public broadcasting community. I am growing weary of efforts by some public broadcasters to use the appropriations process to get their legislative fixes. For any authorization-related legislation, it is *the Commerce Committee* you should be dealing with. I know some of you feel you have tried. But my advice is: try harder. I think you will be pleasantly surprised at this Committee's willingness to address your issues in a fair and balanced manner.

Again, I thank the Subcommittee Chairman for his hard work and for calling this hearing. It is an important matter that deserves our attention.

Mr. TAUZIN. I am pleased to welcome our witnesses today. Let me again thank you. It is late in our session and many of you have made sacrifices, including Beth, to be here and I appreciate that. President and CEO, Corporation for Public Broadcasting, Robert Coonrod; John Hollar, the Executive Vice President of Learning Services, Public Broadcasting Service, here in Alexandria; Peter Jablow, the Acting President and CEO of National Public Radio; Beth Courtney, President and CEO of Louisiana Public Broadcasting; and Monroe Price, Cardozo Law School in New York.

Let me welcome you all, thank you for your attendance. Your written statements are always unanimously agreed to be part of our record. And as you can see, we don't have a big crowd, but what you have to say is very critical to us today and we welcome your testimony.

Mr. Coonrod.

STATEMENTS OF ROBERT T. COONROD, PRESIDENT AND CEO, CORPORATION FOR PUBLIC BROADCASTING; JOHN C. HOLLAR, EXECUTIVE VICE PRESIDENT, LEARNING SERVICES, PUBLIC BROADCASTING SERVICE; PETER A. JABLOW, ACTING PRESIDENT AND CEO, NATIONAL PUBLIC RADIO; BETH COURTNEY, PRESIDENT AND CEO, LOUISIANA PUBLIC BROADCASTING; AND MONROE E. PRICE, CARDOZO LAW SCHOOL

Mr. COONROD. Thank you, Mr. Chairman. It is a pleasure to be here this morning. I have submitted testimony for the record, and I look forward to questions that you may have as we develop the dialog that you talked about over the issues in this bill. But I would like to begin with a couple of opening comments.

In the testimony you will hear this morning from me and my public broadcasting colleagues, Mr. Chairman, you will note significant congruents. We are working together effectively to shape our future.

Public broadcasters around the Nation are reinventing their institutions in the way they serve their communities. CPB, with 93 employees, is an important institution of public broadcasting. The "we," the staff at CPB, are not public broadcasters, we do not operate stations or produce or distribute programs. We play a vital and effective catalytic role.

With the success recently of The Farmer's Wife on PBS, I am attempted to use an analogy that my colleague Irvine Duggan uses. Irvine is the president of PBS. He describes CPB in this way. We at CPB distribute the seed corn. We also provide necessary assistance to assure that the seeds are sewn on fertile soil and that their cultivation and harvest result in an abundance of high quality programming for the American people.

And it is from that perspective that I would like to speak to you this morning. There are a whole——

Mr. TAUZIN. Green Acres is a commercial venture. I am confused.

Mr. COONROD. There is a nostalgia for the family farm, Mr. Chairman. There are a host of uncertainties surrounding the transition to digital. They are technical, regulatory, programmatic and fiscal. As you well know, the telecommunications environment is in a state of unprecedented flux, and the Nation is undergoing demographic changes of similar proportion. So the challenges are formidable. Public broadcasters recognize this. They are changing, transforming and adapting to meet those challenges. They recognize too that the nature of the challenges they face requires that the pace of change accelerate.

This recognition is leading to a renewed sense of mission and a greater clarity of purpose. So there is reason for optimism, not the least because of our successful partnership with the Congress. Your hearing this morning gives us an opportunity to say how much we appreciate your leadership, Mr. Chairman, and that of Mr. Markey. Your willingness to be farsighted about public broadcasting is reflected in H.R. 4067. We believe it represents a very good beginning toward repositioning public broadcasting for the next century.

Your proposals to authorize funding for the digital transition and to reauthorize both CPB and the PTFP for 5 years are especially welcome. Right now we have the opportunity of securing $15 million or more in vital startup funding for the digital transition. Your support for this effort is critical. But ours, Mr. Chairman, is a clear-eyed optimism. It is tempered by the very real appreciation that in fiscal year 1999, stations around the country will experience one more year of reduced Federal support from CPB just as the fiscal changes they face are mounting; therefore, your recognition of the need for significant Congressional support as reflected in the reauthorization stimulates all of us to work to improve our overall productivity.

Your recognition that public broadcasting needs a stable, long-term source of funding enables us to plan for new digital, educational services with the full confidence that we will have the wherewithal to deliver them to every home and classroom in America. I will note, too, Mr. Chairman that the President's Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, what is referred to as the Gore Commission, is likely to reach a similar conclusion about the need for stable long-term funding for public broadcasting. And we are ready to work in partnership to establish the trust fund that you have outlined in your bill.

I would be remiss, however, Mr. Chairman, if I did not mention one of the tensions in our partnership. Public broadcasting is very complex. Reform is difficult. Every interesting proposal seems to have some desirable—undesirable side effect. And Congress, on occasion, adds to that complexity. When you spoke with the participants in the PBS meeting last June, you indicated your understanding of our dilemma.

The proposal to have a commission study these complex issues we think is a productive approach. We are concerned, however, that the timeframe that you have set out for a commission to do its work is overly optimistic, given the nature of the issues that they would have to confront. But in closing, let me again acknowledge your leadership and support and that of Mr. Markey. We value and admire the bipartisan spirit in which you approach this very important question.

Thank you very much, Mr. Chairman.

[The prepared statement of Robert T. Coonrod follows:]

PREPARED STATEMENT OF ROBERT T. COONROD, PRESIDENT AND CEO, CORPORATION FOR PUBLIC BROADCASTING

Good morning.

Thank you for the opportunity to speak to you this morning.

We're also glad to be here, because it gives us a chance to say how much we appreciate the leadership of Chairman Tauzin, Congressman Markey, and this subcommittee on public broadcasting related issues.

Your concern and willingness to be far-sighted about public broadcasting is reflected in H.R. 4067; we believe it represents a very good start toward repositioning public broadcasting for the next century. We are especially appreciative of your proposal to reauthorize CPB for five years and to authorize a five year commitment to digital broadcasting.

Public broadcasting's story is a rich one and destined to become even more remarkable in the years ahead, as we make the transition to digital transmission.

Mr. Chairman, when you announced the bill at the PBS annual meeting, the assembled broadcasters were appreciative of your inclusive approach. They especially appreciated it when you said "...it's not a perfect draft, yet," and invited the broadcasters and others to give feedback to you and to Rep. Markey.

That sounds like good news for nearly 100 million viewers of public television each week and over 20 million who listen to public radio across the country.

On public TV, Americans can see television as commanding as the six-and-a-half hour documentary aired last month, "The Farmer's Wife." We saw and we felt the powerful forces acting on the lives of today's family farmers.

On public TV, American children can see programs that are both mentally engaging and entertaining, such as "Arthur," "Wishbone," "Mr. Rogers," and many others.

Public radio features public affairs programming of exceptional quality and cultural treasures that range from grand opera to folk music to powerful and insightful historical pieces such as the upcoming "Remembering Slavery," in which the recorded voices of former African-American slaves are heard—on the air and in multimedia format on CD-ROM.

And looking ahead, public TV is where the classics of American literature will be brought to the screen with style and care in the recently announced series of nine new movies to be presented as the American Collection under the Masterpiece Theatre banner—made possible by an extraordinary grant of $15 million from CPB.

Appropriately for the digital age—and for public broadcasting's commitment to education—the new series has a remarkable tie-in with the 80,000(!) teachers who belong to the National Council of Teachers of English, and who even now—before the first movie has been filmed—are participating in a national, internet-based project tied to these classics of American literature. The teachers in this project reach over 10 million students in classrooms across the country.

But, as great as these programs are—as well as many others not mentioned today—the capacity of public broadcasting to produce even more quality programming will skyrocket in the digital era.

By the year 2003, we must complete our federally mandated transition from analog to digital, at a cost of $1.8 billion. When that happens, the horizon for public television's creativity and service will virtually disappear.

Single stations will provide multiple channels of programming, not to mention the aesthetic benefits of high definition TV. Opportunities for interactivity will escalate. Imagine watching a science program like "Nova," or a "Great Performance" with the digital-enabled capability to explore information sources beyond the main stream of the program.

We're already planning for the future at CPB. At the corporation's annual meeting in September, the board of directors approved a number of measures designed to strengthen public broadcasting over the next several years.

They included, among others, creation of a new Special Assistance Grants program, especially benefiting small, rural stations, as well as an enhancement of the TV Future Fund, a creative approach that helps all stations become more self-sufficient. The board also extended our policy of encouraging the reduction of unneeded infrastructure while providing multiple differentiated programming services in communities served by more than one public television station.

Of special interest was the board's approval of funds to kick off a new project, DTV 2003, an innovative research and development project for digital content.

Such forward thinking is all directed at one goal—satisfying our commitment to universal service, and as we defined it in our recent strategic review of programming, our commitment to education, innovation, diversity, and localism. Those are the values that matter, those are the values that will drive us as we move into the digital age, and, I believe, those are the values you are seeking to preserve in H.R. 4067.

Thank you. I'm looking forward to answering your questions.

Mr. TAUZIN. Thank you very much for coming.

And Mr. John Hollar, Executive Vice President of Learning Ventures, Public Broadcasting Service here in Alexandria. Mr. Hollar, I welcome you. And, again, we will take your testimony again. And I might mention, by the way, that as we approach the various aspects of public broadcasting, the learning component is one that I hope we will feature a great deal in our discussions today. As the country is making an effort to wire up the schools and libraries, it is also quite evident to us that television is going to play a major role in the schools and libraries, and public broadcasters are going to be a major part of that mix. And I appreciate again your testimony, sir.

STATEMENT OF JOHN C. HOLLAR

Mr. HOLLAR. Thank you, Mr. Chairman. I appreciate that very much. We, too, submitted written testimony for the record, so I will be brief this morning. And I first just want to say on behalf of our President and CEO, Irvine Duggan, thank you very much for the opportunity to be here with you today. I also want to express our gratitude to you and to Mr. Markey for your unwavering support for public broadcasting in these many years.

You have long been leaders in the eyes of everyone at public broadcasting and you have appreciated very much what we and our member stations do. And you represent with Louisiana Public Broadcasting and Mr. Markey with WGBH Boston some of the very best of public television, the excellent quality productions that are done at a national level and stations like Louisiana Public Broadcasting that serve our educational mission, as you just mentioned, so creatively.

Your bill, Mr. Chairman, reflects some very important principles, and you articulatod some of those this morning. You seek to ensure a vibrant and financially secure future for public broadcasting. You believe that we should retain and reaffirm our noncommercial educational mission. You appreciate that our transition to digital broadcasting has both significant potential and significant challenges. And we hold these same beliefs, so we are grateful to have you and Mr. Markey as distinguished leaders and champions of public broadcasting as we face these challenges.

I simply want to make two brief points this morning, Mr. Chairman. The first point is about the timing and context of this legislation and you have alluded to it this morning in your opening statement. This bill comes at a pivotal time for public broadcasting, because this is the moment in history when we make this enormously promising convergence to digital broadcasting. For us the digital transition is not simply a technical migration.

This is a new opportunity for us to carry out our educational mission more broadly, more deeply and more effectively than ever before. We firmly believe, Mr. Chairman, that this technology now matches the educational mission of public television perhaps in a way that it has never done. And because this promise is so rich, we are pursuing this transition with enthusiasm. In November, just next month, we will begin airing high-definition digital programming for local broadcasting every month.

Also next month, we will introduce the world to what we believe is an entirely new form of media. It represents the fusion of broadcast television, video, text, audio and imaging into a new service called enhanced digital television. And we will launch that service next month in a 4-hour documentary profile of Frank Lloyd Wright being produced by Kim Burns.

In short, we are planning a vibrant digital future, Mr. Chairman, one that will create entirely new, extremely powerful educational applications from preschool programs to distance learning for adults to our signature series. As Irvine Duggan testified here last April, Mr. Chairman, this undertaking will be expensive and you have underscored that this morning.

But you have responded in this bill with this forward looking $95 million each year recommendation for a total of $475 million. And we firmly believe that this represents a bold bipartisan expression of support for this transition and this opportunity. I also want to underscore this morning that public broadcasters themselves remain steadfast in their determination to hold up their end of the public-private bargain and to raise more than a billion dollars in private funding to complete the transition and to pay for these very high costs.

So this is a very important moment for us this morning, and that is my first point, the timing and context of and what this means to public broadcasting. The public-private partnership that I just mentioned for our funding moves me to my second point. Because inherent in the partnership between the public and the private sector that this represents, Mr. Chairman, is your faith in public broadcasting's ability to be self-reliant yet accountable to our Federal partners.

So I want to make you aware today of steps that we are taking both on the point of self-reliance and accountability, particularly as those qualities pertain to issues that you have raised in your bill. The first is in the area of underwriting. I want to simply mention this morning that last year four of our major producing stations in PBS joined in an unprecedented collaboration to raise underwriting for national programming. It is called the PBS sponsorship group.

And it was designed to eliminate the duplication in program underwriting at the national level and to maximize the efficiency of our efforts to raise this important source of program funding. Not only has it succeeded on a financial level in its first year, but I want to note that the underwriting obtained by this group fits squarely within our guidelines for underwriting messages. The PBS guidelines are in many cases more restrictive than the FCC guidelines.

So this group represents the principle that not only can we raise money under these restrictive guidelines, but that we can do a better and more efficient job of raising underwriting in a way that is consistent with the efficiency principles that all of you have outlined.

I also want to mention that the PBS board has a subcommittee working on underwriting policies now, and this group is conducting an exhaustive and detailed analysis of our practices. It is one of the most wide ranging inquiries ever launched at a board level. And we are determined, they are determined, to be good stewards of the funding and the trust that you have placed in us. These same qualities of self-reliance and accountability are apparent in the way that we are attempting to address the issue of multiple stations in a single market.

For nearly 2 years, our colleagues at CPB and we have been joined in an effort to engage in a feasibility study for a second national programming service, the working title for which, although it won't be called this ultimately, is PBS II. PBS II would be distinguished from our current national programming. It would have its own look and feel and identity, and we believe that it can provide a distinctive and important service to local communities with more than one member station. At a time when we are on the threshold of 500 commercial channels, we hope that perhaps one more additional noncommercial educational channel might be a welcome thing.

Finally, Mr. Chairman, we support the establishment of the commission that you have advocated to explore more secure funding for public broadcasting. We also, of course, are very much in favor of and appreciative of the funding levels that you have suggested both for CPB and for the digital transition. We want to applaud the principles that you have expressed in your bill. And we are happy to be with you this morning.

[The prepared statement of John C. Hollar follows:]

PREPARED STATEMENT OF JOHN C. HOLLAR, EXECUTIVE VICE PRESIDENT, PUBLIC BROADCASTING SERVICE

Good Morning, Mr. Chairman and Members of the Subcommittee. I'm John Hollar, Executive Vice President of Learning Ventures at the Public Broadcasting Service. We appreciate the opportunity to join this hearing.

Your Leadership

Mr. Chairman, let me first express our gratitude to you and to the Ranking Member, Mr. Markey, for your unwavering support for public broadcasting. Both of you have long been leaders in the eyes of those who work in the public broadcasting family and those who appreciate what we do. Your respective local stations—Louisiana Public Broadcasting and WGBH Boston—represent some of the best of public television: stations dedicated to producing unique, enriching programming, and to serving our educational mission creatively at the local level.

The principles reflected in your bill continue to demonstrate your leadership and support. You seek to ensure a vibrant and financially-secure future for public broadcasting into the 21st century. You believe that public broadcasting should retain and reaffirm its noncommercial, educational mission. And you appreciate that our transition to digital broadcasting has great potential and significant challenges—potential that we must achieve, and challenges that we can overcome with federal support, local ingenuity and business savvy. We hold these same beliefs, and we are grateful to have two distinguished leaders as our champions.

Timing and Context

I want to make two brief points this morning. The first is about the timing and context of this legislation. Your bill comes at a pivotal time for us: the moment in history when we make the enormously promising transition to digital broadcasting. Public broadcasting has sought to be a leader in crafting a bold, new vision for the digital future, and creating that vision has been a shared enterprise involving PBS, our member stations, the Corporation for Public Broadcasting, America's Public Television Stations, and National Public Radio.

For us, the digital transition is not just a technical migration; it is an opportunity to carry out our mission more broadly, deeply and effectively than ever before. Like a library with limited shelf space, we've always had a wealth of material sitting in storage. DTV promises to expand our electronic shelf space many times over. The technology now matches our mission.

Because the promise of this future is so rich, we're pursuing this transition with enthusiasm. For many months now, we've been broadcasting high definition television on one of our satellite channels. In November, we'll begin airing high definition digital programming for local broadcast every month. Also, next month we will introduce the world to an entirely new form of media: the fusion of broadcast television, related video, text, audio and images into a new service called "enhanced digital TV." In short, we are planning a vibrant digital future—one that will create entirely new, extremely powerful educational applications, from preschool programs to distance learning to PBS's signature series.

As our President and CEO, Ervin Duggan, testified here last April, this undertaking will be expensive. He appealed to you to make Congress a partner co-investing with us to deploy the necessary hardware—just as Congress has helped with our infrastructure in the past. And you have responded. Your forward-looking bill calls for $95 million each year for five years, for a total of $475 million. While less than public broadcasting's request—$600 million over four years—your recommendation represents a bold, bipartisan statement of support. Public broadcasters remain steadfast in their determination to hold up their end of this public-private bargain and raise more than $1 billion to pay for the majority of the transition costs.

Thus, the context of this bill is a critical turning point in our history. Moving successfully into the digital future is crucial to us, and we appreciate your recognition and support.

Self-Reliance and Responsiveness

The public-private partnership I've mentioned for funding our move to digital leads to my second point. Inherent in the partnership is your faith in public broadcasting's ability to be self-reliant, yet accountable to our federal partners. I want to make you aware today of steps we're already taking to be more self-reliant and more responsive, particularly as those qualities pertain to issues raised in the bill.

The first is in the area of underwriting. Last year, four of our major producing stations and PBS joined in an unprecedented collaborative to raise underwriting for national programming. This new enterprise, the PBS Sponsorship Group, eliminates duplication and maximizes the efficiency of our efforts to obtain revenue from corporations to support PBS programs.

Significantly, the underwriting obtained by the Sponsorship Group fits squarely within PBS's existing guidelines for underwriting messages. These guidelines were developed with the input and support of our member stations, and are generally more restrictive than the FCC's guidelines. The Sponsorship Group represents the principle that we can do a better, more efficient job of raising underwriting for national programming, and that we can do so within the letter of our existing policies.

In addition, the PBS Board has had a subcommittee working on underwriting policy issues for many months. Pursuant to a new PBS governance system that provides a broadly inclusive forum for resolving important policy issues, this group is conducting an exhaustive and detailed analysis of current underwriting practices to provide valuable data for informed decision-making about underwriting policies. We believe these two efforts—an efficient, national underwriting enterprise and Board-level attention to addressing underwriting issues—demonstrate that we are being good stewards of the funding and trust you have placed in us.

The same qualities of self-reliance and accountability are apparent in the way we're addressing the issue of multiple public television stations in a market. For nearly two years, PBS, CPB and a number of our stations have been engaged with outside consultants in a serious feasibility study of a second national programming service for member stations in markets with multiple stations. The working title—although we don't expect it to be the final name for the service—is "PBS2." PBS2 would be distinguished from our current national programming and would have its own look, feel and identity. The early work on PBS2 indicates that public television can provide a significantly distinctive and important service to local communities with more than one PBS member station.

In an era when a tiny sliver of the electronic media is dedicated to education and public service, multiple-station markets are oases of locally-governed assets serving the public interest. Our challenge is to work with each station to find creative solutions that maximize the value of their services to their communities.

Funding for the Future of Public Broadcasting

Finally, Mr. Chairman and Mr. Markey, we support the establishment of a commission to explore ways to provide more secure funding for public broadcasting. Forming and capitalizing a trust fund, or other similar fiscal mechanism, to provide reliable, ongoing support for what we do is an endeavor that PBS has long endorsed. We also appreciate and support the bill's five-year authorization of CPB and the solid benchmark for CPB funding.

In closing, I want to applaud again the important principles expressed in your bill. As we face the exciting and expensive prospect of the digital future, we at PBS are happy to join our colleagues today in thanking you for your support in the past, and in urging your support in the future.

Mr. TAUZIN. Thank you very much.

And now Mr. Peter Jablow, the Acting President and CEO of National Public Radio. I have got the pronunciation right, Peter?

Mr. JABLOW. Absolutely.

Mr. TAUZIN. All right. For your testimony.

STATEMENT OF PETER A. JABLOW

Mr. JABLOW. Chairman Tauzin, Mr. Wynn, and other members of the subcommittee, thank you for inviting me to speak today on behalf of National Public Radio and the more than 600 noncommercial educational radio stations that we represent.

Mr. Chairman, we recognize that you value public radio. I want to address the complicated issues facing our industry now and in the future. The Federal investment and the unique service that public radio offers is a great bargain. At present, public radio costs each American taxpayer a mere 23 cents per year. The American public has also demonstrated its ongoing support by tuning in in ever increasing numbers; nearly 20 million people each week now listen to NPR stations.

Turning to H.R. 4067, Mr. Chairman, we appreciate your efforts to craft legislation that addresses critical issues important to the future of public broadcasting. NPR is most pleased that 4067 authorizes CPB, reauthorizes the public telecommunications facilities program and authorizes a new digital transition program for public broadcasting. We would like to work with you to ensure that public radio's specific digital needs can be met. In addition, we need your support in addressing our other immediate challenges, securing funding for public radio's next generation satellite interconnection system and ensuring public broadcasting continued access to broadcast spectrum.

NPR manages the public radio satellite distribution system, which distributes the audio programming of more than 250 different producers and distributors through a network of interconnected public radio stations. In 1978, Congress established the system and helped refurbish it a decade later. We now need your help again sooner than expected. On May 21 of this year, we notified the leadership of the subcommittee of the catastrophic failure of the Galaxy 4 satellite. The emergency caused a complete outage to the public radio system. Securing replacement transponders for what was lost in May has now become a top priority.

We intend to seek Federal appropriations in early 1999 for this purpose, and we are currently engaged in developing a systemwide plan for the interconnections system's long-term needs. Another key issue is preserving spectrums set aside for public broadcasting. In the interest of time, I will refer you to my written statement on the issue of continued availability of broadcast spectrum, which is a significant concern to our station.

H.R. 4067 recognizes that NPR and public radio stations face major challenges as we enter the next millennium. These changes include, one, how to remain true to our public service mission, reach a broad spectrum of the American public and generate sufficient revenue to complement, if not replace, the Federal appropriation; two, how emerging delivery methods affect us and; three, how does public radio best exploit and adopt new technologies.

Mr. Chairman, it is clear that you understand and appreciate the complexity of the challenges we face. And we are grateful for your help in moving public broadcasting forward. In particular, we support your efforts to develop a trust fund and methods for capitalizing it in order to reduce and perhaps eliminate the need for a Federal appropriation. More extensive deliberation, including station consultation, must occur before specific reforms are enacted, otherwise, the bill as drafted could yield unintended consequences for public broadcasting.

For example, while the bill's proposed commission would be reviewing the optimal revenue mix for public broadcasting, at the same time, the bill itself enacts specific underwriting changes that would have significant budgetary implications for public broadcasters. With regard to underwriting, I would like to emphasize the importance of each revenue source to public broadcasting's viability, in the need to examine whether particular changes will materially affect our noncommercial nature for better or for worse.

The issue of station overlap is also a complicated one. As a local medium the needs of a community often dictate that more than one public radio station is not only desirable, but also sustainable. The bill also establishes so-called incentives for voluntary consolidation. In the case of radio, it is not entirely clear how the incentives would work. If consolidation and commercial radio has reduced localism in broadcasting, as we surely believe it has, the committee should consider carefully whether consultation in public radio is ultimately desirable.

Mr. Chairman, in conclusion, today has allowed us to further the discussion of our immediate and future needs. Public radio remains a unique service and resource to the American public. As you have discovered, there are no easy answers nor a single solution to the challenges we face. We are ready to work with you and your colleagues to ensure the viability of public broadcasting in America. Mr. Tauzin, when this bill was introduced, you said, "it is time for Congress to decide what its commitment to public broadcasting will be."

We have no doubt your level of commitment and your support for public broadcasting. It is our sincere hope between now and the return of Congress in January we will be able to reach our shared goal of an authorization in time for the next appropriations cycle and that we will have begun exploration of the issues so key to public broadcasting's future. Thank you for your consideration.

[The prepared statement of Peter A. Jablow follows:]

PREPARED STATEMENT OF PETER A. JABLOW, ACTING PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL PUBLIC RADIO

INTRODUCTION

Chairman Tauzin, Congressman Markey and other members of the Subcommittee, thank you for inviting me to speak today on behalf of National Public Radio (NPR) and the nearly 600 stations airing NPR programming across the country. I am Peter Jablow, Acting President and Chief Executive Officer of NPR, a private nonprofit company that produces and distributes shows such as *Morning Edition®*, *All Things Considered®*, *Performance Today®*, distributes *Car Talk* and *Jazz Set*.

As a membership organization, NPR represents approximately 600 noncommercial educational radio stations throughout the United States. NPR also provides a twenty-four hour stream of public radio programs to the Armed Forces Radio and Television Service for the benefit of our armed forces throughout the world.

If you listen to public radio here in the Washington metropolitan area or when you are back in your home state, you know there is nothing like public radio anywhere else on the dial. There is no commercial counterpart. Stations carry out their public service mission by providing listeners with entertaining, educational and informative programming.

Public radio is free, portable and universally available. We don't do "sound bite" journalism; rather, our comprehensive coverage takes the listener to the heart and sounds of the story. Stations contribute public affairs and other local coverage to complete national programs. The result? Award-winning news and cultural reporting offering insight into world events and the arts and providing life-long learning opportunities through music, books and the theater.

The mega-mergers in the communications industry and consolidation on the commercial radio side make the continued viability of public radio stations more important than ever. Public radio stations are local institutions, licensed to non-profit, educational groups such as school boards, states, private or state universities, local educational organizations or non-profit community corporations. Community leaders serve as station board members and volunteers assist in many daily activities. Listeners invest in their local station, not just by their financial contributions but by giving their time as well. According to the Corporation for Public Broadcasting's research, in 1997 the total volunteer hours for radio is 1.1 million, the equivalent of 568 full-time employees. In 1995, public radio had close to 2 million individual contributors. Over the years public radio stations have provided students with training and internships in every aspect of broadcast operations. Public radio stations are motivated by noncommercial and educational purposes, not by revenues or ratings. Local public radio stations provide a unique blend of community information with broad, national programming—all valuable to their listening audience.

Stations go the extra mile by involving their listeners with the programming long after it airs. They are dedicated to reaching out to schools with special learning programs and to the visually handicapped by providing radio reading services. Here are a few illustrations of how public radio stations "connect" to their communities:

- *WCVE-FM in Richmond, VA* celebrates its tenth anniversary this year, serving the surrounding area and the state. The station covers the Virginia State Legislature every session, plus provides programs on history and educational developments at Virginia's state colleges and universities.
- *KRVS-FM in Lafayette, LA* provides south Louisiana listeners with approximately 30 hours a week of music and cultural programming of the Cajun and Creole people.
- During the 1998 ice storm, *Maine Public Radio* provided crucial information to people affected by the bad weather. Stations broadcast call-in shows that allowed people to ask questions of representatives of the power companies, federal emergency agencies and public health officials. Also, Governor King used the radio to direct people where to go to receive help.
- *Connecticut Public Radio* continues its *Music To Their Ears* campaign, collecting over 130 musical instruments from listeners for the Hartford Public School system's music program. Over the past two years, Connecticut Public Radio has been cited for its national leadership in this area.

NPR last appeared before this subcommittee in 1996, when former Chairman Jack Fields held a hearing on his public broadcasting authorization proposal.That was a time when the question of continued federal support of public broadcasting was front-page news. At the time, Congressional offices reported that they received more mail on the public broadcasting issue than many other pressing world events, such as the Bosnian conflict. Constituent response was overwhelmingly positive in favor of keeping public funding of the public broadcasting system.

The public showed its support in a variety of ways. In a 1997 Roper Starch Worldwide poll, when given a choice of 20 services, Americans judged public radio and television the second and third best value in return for federal tax dollars spent. Military defense ranked first. The American people consider federal funding for public broadcasting to be a wise use of their tax dollars because they value the programming and services provided by their local public station and the per capita cost is minimal. For Fiscal Years 1998 and 1999, public broadcasting cost each American 93 cents per year. For public radio alone, this figure is merely 23 cents per American each year.

The public has also expressed its support for public radio simply by tuning in in record numbers. According to a Spring 1997 Arbitron report, 17.9 million people a week tuned in to NPR stations—a preliminary report from spring of this year shows an increase to 19.3 million weekly listeners.

Despite these achievements, we have not grown complacent. Since the funding challenge in the last Congress, public radio has worked to increase private support. While 1997 figures show federal funding accounts, on average, for 15% of a station's budget, stations have made a concerted effort to look at other ways to grow and retain support. Public radio stations are working at gaining new members, increasing the level of contributions and raising their visibility within the community.

My public broadcasting colleagues on this panel and I recognize that you, too, value what we do and want to address the complicated issues facing our industry now and in the future. We appreciate your efforts to craft legislation that would help public broadcasting address these matters, especially those that are most pressing.

IMMEDIATE NEEDS

We are pleased to see that the proposed bill reauthorizes funding to support stations' operational, programming and capital equipment needs and authorizes funding to help public radio stations cover the high cost of digital broadcast conversion. In addition we would like to work with you to secure funding for public radio's next generation satellite interconnection system and assure public broadcasting's continued access to broadcast spectrum.

Authorization The Tauzin/Markey bill authorizes CPB through FY 2003 at an amount not more than $475 million, the Public Telecommunications Facilities Program (PTFP) is reauthorized through FY 2001. We applaud these provisions since CPB has been without an authorization since 1996 and PTFP has been unauthorized since 1994.

During the 105th Congress, staff from the various public broadcasting organizations worked diligently with members of the House and Senate in the hope of moving a bill. Although a bill was introduced in the House, HR 2979, the only action was a hearing in this Subcommittee. The House and Senate Commerce Committees both held hearings on the future of public broadcasting but no bill was ever introduced in the Senate.

We appreciate the support of this Committee and the Appropriations Committee. Even without an authorization, CPB funding has increased in the last appropriations bill by 20 percent, from $250 million to $300 million. Nonetheless, this increase follows 2 years of flat funding and rescissions. Moreover, it is below the previous amounts that have been authorized. In FY 1996, the last time CPB was authorized, the amount approved was $425 million.

Financial support for the only capital improvements program for public broadcasting, the Public Telecommunications Facilities Program (PTFP), has faltered but continued without an authorization. In 1997 the Administration's budget eliminated PTFP funding. This followed a drop in FY 1996 from $29 million the year before to $15 million. Last year Congress, urged on by the public broadcasting community, ultimately restored $21 million to the program. Both CPB and the PTFP program are of vital importance to public broadcasting stations, providing programming money, seed money for other operations, equipment and facilities.

The PTFP grant awards just announced for radio include awards to stations located in 14 different states that the members of this Subcommittee represent. They are: LA—Red River Radio Network; OH—WGTE—Toledo, WMUB—Oxford, WOSU-AM—Columbus; CO—KUVO—Denver; TX—KUHF—Houston; MI—WUOM—Ann Arbor; WNMU—Marquette; FL—WMNF, Tampa, WJCT—Jacksonville, WFSQ—Tallahassee; OK—KGOU—Norman; WI—WORT—Madison; Wisconsin Public Radio; CA—KRCB—Rohnert Park, Radio Bilingue; WA—KDNA—Yakima, KSER—Snohomish County, Yakima Reservation; VA—WETA—Arlington; TN—WUTC—Chattanooga; NY—Radio Reading Services of Western NY, WAMC—Albany, WBAI—New York City; WNYC—NYC; WMHT—Schenectady; MO—KDHX—St. Louis.

Digital authorization

We appreciate that the bill provides an authorization for transitioning to digital, specifically $95 million to be appropriated for FY 1999-2003. We would like to work with you, however, to ensure that public radio's specific digital broadcasting needs can be met. First, public radio stations will be adversely impacted by digital television (DTV) conversion and affected stations will need financial assistance to minimize the costs. Second, public radio stations will require assistance in their own conversion to digital radio technology.

The Federal Communications Commission's (FCC's) DTV timetable mandates that by 2003, public television will be transmitting a digital signal. While I will defer to my public television friends on their specific needs, it is important to address how public radio will be affected. I have attached the results of an NPR survey of our stations showing that from now until 2003 roughly 10 percent of our full member stations are likely to be hit with DTV associated costs. These costs range from the thousands to the millions of dollars, due to tower relocations, interruptions in service caused by tower modifications and interference issues.

- *WCVE-FM* in *Richmond, VA* leases tower space from WTVR-TV, Channel 6. The TV station will need to add digital transmission equipment to a tower that is currently fully loaded, forcing radio to relocate its antenna or construct a new tower, an estimated cost of $100,000 or $1,000,000, respectively. WCVE-FM's problem is compounded by the fact that public radio stations are located at the lower end of the FM band, which is close to the Channel 6 frequency. TV Channel 6 causes interference with FM audio, limiting the alternative locations for public radio's transmission equipment.

- This year *KUHF-FM* in *Houston* received a two month notice that it is being displaced from its current tower due to conversion by the commercial licensee who owns the existing tower. KUHF-FM estimates that the DTV related moving costs will reach $500,000. KUT-FM in Austin faces a similar problem in the near future.
- *WNYC-FM* in *New York City* may be forced to vacate its current broadcast tower and move its transmitting equipment from atop the World Trade Center, because of a proposed new DTV tower at the site creating possible interference problems. The only other suitable location for signal transmission is the Empire State Building. The station estimates that it will cost at least $1 million to relocate to the Empire State, not to mention rental costs at the new site.
- Two *Denver* public radio stations *KCFR-FM* and *KUVO-FM* will be moving next year—KCFR-FM estimates costs will reach $100,000, while KUVO-FM estimates $75,000. Both public radio stations are co-located on public television station KRMA-TV's tower. The county government requested that KRMA-TV and several area television stations combine their DTV operations on one tower, thus abandoning the site that KCFR-FM and KUVO-FM are currently renting. Meanwhile, the old KRMA-TV tower will be destroyed, forcing the two public radio stations to relocate with KRMA-TV.
- In 1999, public radio station *KUNI-FM* in *Cedar Falls, IA,* anticipates being forced to move to free up TV tower space—DTV related interference and moving costs may reach $2 million.
- In 2000, public radio stations *KPBS-FM* in *San Diego* and *KPCC-FM* in *Pasadena,* respectively, expect a move and a Channel 6 interference problem due to DTV conversion.
- *KPBS-FM* in *San Diego* is located on a commercially-owned television tower. Because of a tower space issue, the owners requested KPBS-FM move from the tower on January 1, 2000 in order to make room for television's DTV antenna. *KPBS-FM* estimates that building a new tower will come to $325,000.
- *KPCC-FM* in *Pasadena* potentially will experience interference problems as a result of neighboring television stations converting to DTV. *KPCC-FM* is located on Mt. Wilson, which has the highest signal density nationwide—more than 50 signals in one square mile. The costs of fixing interference problems are unknown at this time.
- In *2001 WWNO-FM* in *New Orleans* may be forced to move its transmission equipment from the WDSU-TV, Channel 6 tower where it has been located since 1972. WWNO-FM's frequency is also close to the Channel 6 frequency making a remedy difficult without losing coverage area, listeners and revenue. What amounts to an unfunded federal mandate will cost the station as much as $150,000 to relocate.
- The same year *KCUR-FM* in *Kansas City, MO,* anticipates having to move its transmitting equipment from its leased tower. KCUR costs will amount to nearly $120,000. Even if the station stayed on its existing tower, accommodating additional DTV transmission equipment would create additional costs for radio.
- *WKYU-FM, Bowling Green, KY* is co-located on Kentucky Public Television (KET) station WKLB-TV's tower. WKYU-FM anticipates having to move its transmitting facility in 2002 due to digital television because of a weight and a space problem. The station will either have to build a new tower or find another tower in its market to relocate. A cost estimate to build a new tower is $200,000. Other expenses include buying ten acres of land, constructing a transmitter building ($40,000) and moving to a new location ($200,000). These costs are dependent on KET's digital plans, but assume a conservative estimate for the potential costs to WKYU-FM of $440,000.
- *WMKY-FM* in *Morehead* is co-located on KET's tower and will potentially be impacted by the DTV transition, although at present it is uncertain of the timing and costs.

The number of public radio stations and amount of associated costs are likely to grow as more television stations prepare to convert.

With regard to public radio's own conversion needs, our most recent estimate of costs for converting NPR and CPB-qualified stations to digital transmission totals $60 million. We fully anticipate that an In-band-on-channel digital transmission standard will be adopted by the year 2000. Thus, radio's share for digital must be included in any digital funding appropriation.

Satellite authorization National Public Radio manages the Public Radio Satellite Distribution System (PRSS) for the public radio system. Our role is to oversee a highly specialized interconnection system, which is designed for multiple-channel distribution of audio programming from a variety of sources, not just NPR, to a network of interconnected public radio stations. Currently more than 250 different distributors use this system each year to distribute programs to public radio stations.

By way of background, in 1978 Congress was instrumental in the birth of the national satellite distribution system—a system for the distribution of public radio programming that has proven to be an efficient and effective way to distribute high quality local, regional and national public radio programming among stations nationwide. In 1988, recognizing the need to replace the aging system, Congress again authorized funds to replace public radio's satellite transponders and ground equipment. The Public Telecommunications Act of 1988 authorized $200 million total for public radio and public television. Public radio received approximately $50 million of this amount. These funds were appropriated in FY 1991, 1992, and 1993.

As we reported to the Subcommittee earlier this year, on May 19 the Galaxy IV satellite which distributes public radio programming to stations failed, causing a complete service outage. NPR acted immediately to implement a backup plan to deliver programming to more than 600 radio stations nationwide through a variety of options.

Currently we are working with prospective satellite vendors and outside business consultants to prepare for the next step. We have engaged stations and producers in the discussion of future needs of the program distribution network. In the meantime, the catastrophic failure in May has created an immediate need. Although not all the details have been worked out, it will be necessary for public radio to seek federal appropriations in early 1999 for the purpose of securing replacement capacity for the transponders lost in the failure of Galaxy IV. We are counting on the members of this Subcommittee for their support.

Preserving Public Broadcasting Access to Spectrum Spectrum scarcity is of the utmost concern to our stations. At the public radio annual meeting in June, station managers all over the country lamented their inability to protect their signals' robustness because of spectrum grabs on adjacent channels. Further, stations in the West are finding it increasingly difficult to obtain the spectrum needed to locate translators, which boost a broadcast signal to bring service to remote areas.

Exacerbating these concerns has been the FCC's proposal to require pubic radio stations to compete at auction for broadcast spectrum. If the FCC goes ahead with this—or worse yet, simply refuses to accept applications for noncommercial educational service on non-reserved frequencies, as the FCC has suggested—it will severely restrict the ability of public broadcasters to extend and even maintain service in rural and underserved communities.

Public broadcasting believes Congressional intent was clear in adopting the Balanced Budget Act of 1997, which the FCC is relying upon in this matter. The Act does not authorize the FCC to use auctions where public broadcasters propose a noncommercial educational service, regardless of whether the service is on a reserved or non-reserved frequency.

NPR welcomes the opportunity to address this issue with members of the Committee.

CHALLENGES CONFRONTING PUBLIC RADIO

In addition to addressing many of these more immediate needs, HR 4067 recognizes that we face significant challenges as we enter the next millennium. If we are to further our mission and build upon the successes of the past 25 years, some of the difficult issues we must address include the following:

How does public radio remain true to its public service mission, continue to offer quality noncommercial and educational programming, reach a broad spectrum of the American public, while generating sufficient revenue to complement, if not replace, the federal appropriation? In past years, Congress has encouraged public broadcasting to become more entrepreneurial, make shrewder business deals, leverage our assets. We have heard you. NPR and our stations are diligently developing business initiatives that leverage our assets and build upon our goal of increased private support. Our initial efforts and research, however, indicate that radio's options for ancillary revenue are limited.

How will emerging delivery methods affect us? The public radio system is comprised of stations, all of whom are content providers. The opportunity provided by new program delivery platforms brings with it the challenges of making it work on a national and local level. Public radio must maintain its unique blend of local and national identity as the new satellite-based national delivery services launch. Working in concert with our member stations, NPR is examining how it can extend public radio developed content to provide a national program service. The service would highlight the best of local content for national and worldwide distribution.

How does public radio best exploit and adopt new technologies? Our goal is to keep pace with listening habits and build our audience. As satellite, new media, on-demand and other ancillary distribution technologies emerge, public radio must be there. We welcome the chance to educate, inform and reach new audiences, especially those that tend to be early adopters of non-mainstream alternative technologies. NPR was proud to be a launch partner with Real Audio Networks and ABC to premier streaming audio on the Internet. Partnership funding made this and other new technology ventures possible for NPR, which does not have an R & D budget of its own.

DELIBERATION & REFORM

Given the complexity of these challenges, we acknowledge first and foremost that there are no simple solutions. Mr. Chairman and Mr. Markey, you share the same conclusion, which is why Title I of the bill establishes a Commission to examine the future of public broadcasting. While we believe many of these issues could be addressed through a Commission or simply further discussion with the Subcommittee, we support your efforts to help public broadcasting move forward. In particular, we support your efforts to develop a trust fund and methods for capitalizing it in order to reduce and perhaps eliminate the need for a federal appropriation.

Whatever the process for further deliberation, however, public radio strongly believes that more extensive deliberation must occur before specific reforms are enacted.

As a general matter, it seems counterproductive and, in some cases, unwise to enact specific changes, as Title II and III would do, while simultaneously the proposed Commission would be deliberating over the same or related issues. For example, while the Commission would be considering what might be the optimal revenue mix for public broadcasting in the future, the bill would make very specific underwriting changes that could have very significant budgetary implications for public broadcasters. We are prepared to sit down and discuss the issue of underwriting and other matters, whether with the proposed Commission or directly with the members of this Committee, but those deliberations ought to occur before any specific changes are made.

QUESTIONS & CONCERNS WITH SPECIFIC REFORMS IN HR 4067

In addition to our general view that any specific reforms warrant more extensive deliberation, NPR has a number of concerns about the following suggested reforms:

Underwriting

We appreciate the concern that enhanced underwriting may be commercializing public broadcasting. At the same time, however, it is essential for the Members of this Subcommittee to understand the importance of each revenue source to public broadcasting's viability, the likely revenue consequence of potential changes, and whether particular changes will materially affect the noncommercial nature of public broadcasting for better or worse. In that regard, we believe the proposed changes require much more discussion to address basic questions such as the following:

- Whether the exclusion of an underwriter's street address, as the bill apparently would mandate, materially improves the noncommercial sound of public radio?
- To what extent would such a change discourage business support?
- Why permit established corporate logos in public TV underwriting credits but not in public radio underwriting credits?
- Is it wise or even constitutional for the advisory commission's recommendations to trigger specific legal restrictions on underwriting without any action by Congress?

Even with the success of some big city stations in generating corporate underwriting support, most public radio outfits operate on a shoe-string budget. The cushion is so thin, that for these stations even the slightest underwriting change could have a huge impact. We would like the opportunity to thoroughly investigate and discuss the impacts of these proposed changes before Congress takes action.

Station overlap/Unjust enrichment

This is an issue fraught with complications. Each public radio station's format is designed to best serve the community. Public radio prides itself on localism and fifty percent of public radio station programming is locally produced. As a local medium, quite often the needs of a community dictate that more than one public radio station is not only desirable but also sustainable.

The bill attempts to address perceived problems with overlapping public radio stations by attempting to prevent unjust enrichment from the sale of an overlap broadcast station. What prompted this provision may be the valid concern by HR 4067's authors that guidelines and protections are needed in the event a public station is sold.

We believe, however, that the bill sets up an administratively complex proceeding that is as likely to produce unintended consequences as intended ones. Each transaction would have to be reviewed on a case-by-case basis, making the proceeding burdensome and ripe for gamesmanship. The bill does not address stations located on the reserved FM band that may be transferred without an FCC proceeding, even though the sale might be viewed as producing unjust enrichment. It is also likely that in some cases, investment in a station will be discouraged, given the threat of payback to various federal agencies before a sale is finalized.

Consolidation of station operations

The bill establishes "incentives for voluntary consolidation." In the case of radio, it is not entirely clear how the "incentive" would work. It may be difficult to apply the hypothetical portion of the provision—"if such areas were served by a single public broadcast station"—for purposes of determining how much funding a consolidated station might receive. In addition, the provision appears to say that if a consolidated station does not meet audience service or community support criteria, then it would not receive any funds. We also believe, as addressed above, that a community's needs typically require multiple public radio station outlets and it is unclear that a single consolidated station can adequately serve those needs.

CONCLUSION

Mr. Chairman, in June, as this bill was introduced, you said, "it is time for Congress to decide what its commitment to public broadcasting will be." There is no doubt of your level of commitment and support of public broadcasting. This hearing today has provided us with the opportunity to talk about our immediate and future needs, and remind us of the unique service that is public radio. There are no easy answers to the challenges we face and no one-size-fits-all solution. Your bill shows that you understand this. Public broadcasting is ready to work with you and your colleagues. Thank you for your consideration.

Mr. TAUZIN. Thank you.

We will now hear from Ms. Beth Courtney, President and CEO of Louisiana Public Broadcasting. Beth?

STATEMENT OF BETH COURTNEY

Ms. COURTNEY. Good morning, Mr. Chairman, members of the committee, Mr. Wynn. I am Beth Courtney, President and CEO of LPB. We operate six stations statewide and an affiliated station in New Orleans, as well as more than 100 satellite receivers in high schools and technical colleges throughout Louisiana, and we provide tower space and generators for public radio stations, as well as small grants.

I am also the vice chairman of the board of trustees of APTS and chairman of the Satellite Educational Resources Consortium. So I thank you for the opportunity to testify on H.R. 4067, the Public Broadcasting Reform Act of 1998.

On behalf of APTS member stations, I want to thank you, Chairman Tauzin, and Ranking Member Markey for introducing this bill. The public broadcasting community is anxious to work with the committee on this legislation that will reauthorize CPB and the public broadcasting facilities program and establish a new grant program to assist public broadcasting stations in their transition to digital.

In remarks to the PBS annual meeting in June, which we enjoyed satellite uplinking to them, Chairman Tauzin, you stated that it was your intent that the bill be the beginning vehicle for discussion with the community and it would lay important ground work for passage of legislation early in the next Congress. We view this hearing as another important step in the process, and we thank you for holding it.

First, I want to comment briefly on a few aspects of the bill and then focus on our vision for public television in the digital world. We are grateful for and strongly endorse the three authorization provisions in the bill. They are critical to the future of public broadcasting. The authorization of $475 million for CPB recognizes public television's need for additional revenue to support both analog and digital operations and to begin to fund our vision for digital.

The authorization of $95 million per year for 5 years, starting this fiscal year, is critical to our stations' transition to digital. The stations simply will not be able to make the transition without Federal support. Almost half of all public television licensees will incur transition costs that exceed their projected annual revenue. To give you an idea of that in Louisiana, we are projecting it is going to cost us $23 million to convert. And that is just converting, that is not buying high definition cameras or anything like that.

And in our State, we just had the Louisiana legislature appropriate a little money for tower studies to begin the process, because we really laid it out, in which I have to raise $6 million, small task, and then we are—we hope we have Federal appropriations and then State appropriations to assist us. So it is really going to be a partnership. I have to tell you we began with this little grant this time, this year, and we, of course, are going to do tower studies on wind loading and tower strength, whether we can keep public radio on or not, which is a problem. But we were tested this past week by Hurricane Georges and we don't want to be tested like that in the future.

I would say to you, those of us who operate the hardware that all this is going to take to do don't want to be facing a hurricane or a critical disaster when we turn around in 2003. It is taking a lot of hard engineering work to begin to do that transition to digital. And we really have to start now or we won't be able to accomplish it in that period of time. It just takes so much time to do it. I can't stress the need for that.

I think to me that FCC deadline of 2003, we have all of the planning processes in place and my colleagues around the country are really concerned about getting started on this or we won't have it done by the time. We applaud you for your vision to providing a long-term funding source. We presented such a vision in Congress in 1995 in a document entitled The Road to Self-Sufficiency, and we look forward to working with the commission and Congress to make this a reality.

We would offer two suggestions regarding the commission's vision in this bill. We hope that you would consider including a public television-public broadcasting professional on the commission. That is our suggestion for you, because we think we can bring some insights to it if you would consider it.

And I also would agree with my colleague that 4 months is a short time period to do all the study and perhaps we need a little more time to be able to accomplish that task.

Finally, I want to comment on the underwriting provisions. That was the most exciting one when you announced it at the annual meeting, because I, too, like you, think it is very important for us to maintain our noncommercial nature. I think that is essential to what we are. But the reality is if we turn it back to the pre-1981, the blue screen and white letters and 10 seconds, it is going to have a tremendous impact, because underwriting constitutes $291 million or 15 percent of public broadcasters' total budget, and to undermine the source of revenue before we have managed to lay out what we might do in the future would really be devastating, especially since we are facing all these tremendous and exciting challenges of raising all of this money in the digital future.

We share your vision of eventually replacing our reliance on a permanent funding source, but this is obviously practically a matter of concern for my colleagues. I would like to take a few minutes just to mention to you, I see my red light, what we want to do. I am so excited about the digital environment, because in Louisiana, like some of my colleagues, during the day, we don't have to choose any more between adults and children. We don't say, I am sorry I can't do a college credit class, because I have to put on a ready to learn service. We will be able to do at least four channels at the same time. So I am really laying out what we might do, as are a lot of my colleagues.

We hope to have assistance from PBS and others. But we are producing a lot of programs because, you know, education is a State's responsibility, too. So what we are trying to do is share. Right now I would envision we do a children's channel on one channel. We will do an adult learning channel where we work with college credit classes, GED, and we are doing work with technical challenges, because I think it is so important for us to do absolutely some of the training so we can put citizens back to work. I mean we are doing things as pedestrian as training welders, because that is what we need in Louisiana. So that is the kind of thing we will do.

On another channel we are going to do lifelong learning on how-to sort of thing, because as you mentioned before, people like to cook and do all sorts of things in our States. So that is not only a learning experience but an entertainment experience. The fourth channel I think is very important. I am a political reporter and, Congressman, you and I go back a long way, and I think it is vitally important that we, and I can speak only now for my State, use one of those channels to put on public hearings, to put on the Louisiana legislature, to put on debates, to put on all of the vital business of public affairs and democracy.

And we intend to do that with one of our channels. Right now we are doing an experiment. We have it on cable, and they have only managed to give us 3 hours, begrudingly in some parts of the State. And we look forward to the digital environment with that.

I guess the other thing I would say to you is I hear about overbuilt and I hear about overhead. We have parts of our State that we don't even have a signal. Bogalusa, they don't have public broadcasting, and there is a whole eastern part of Texas and Louisiana we don't even have a signal. So in many cases I think that has been overstated.

I do think that we do need to look together to what we might do in the future. And I just come back from an APTS board retreat where we have talked about joining with our colleagues and other public institutions to bring together the exciting things of universities and museums and libraries. I serve on all the State planning boards for Louisiana where we talk about technology so that we can use this powerful medium of television to help accomplish all of these things. And we need to do that same thing on a national level.

We need to be at the table when they are talking about wiring the schools; I am in Louisiana. We need to be there at the national level. It is because—not because we are trying to have a little piece of the pie or anything but because we can bring so much to it. When we put our Web address on, the teachers know where to turn. So we are sort of an access where we merge these exciting visions of technology for the future. And we really, I think, can do tremendous things.

To give you a concrete example, we are doing—we trained in the last 4 months 1,200 teachers in introductory Internet training. Is that what televisions station do? Not generally. But that is what public broadcasters do. So I guess I would say one final thing to you about public trust. I was in Lake Charles, Louisiana with the First Lady Alice Foster. She has a project where she is giving out a book to every 5-year-old in the State. It is called You Are Sunshine. We probably couldn't get Jimmy Davis to sing a song. But anyway it is part of our ready to learn service, too. That is why I was there. And I had 53 little 5-year-olds in Calcasieu Parish, one from every kindergarten and, you know, Alice was reading to them and everything.

And I had them and, oh, a focus group, let me ask you a question. And I said, who do you like on television? Spontaneously they said, Arthur, Elmo, Cookie Monster. There was a disagreement, but they were all the people we know. I mean this was spontaneous, unrehearsed, no spin, no media manipulation. Those 5-year-olds trust us. And it is our desire to fulfill that trust.

So in the future, I hope as we build this trust for public broadcasting that is the kind of thing we hold on to, focus on our mission, because I think we are not doing enough. And we need your help, thank you.

[The prepared statement of Beth Courtney follows:]

PREPARED STATEMENT OF BETH COURTNEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, LOUISIANA PUBLIC BROADCASTING

Good morning, Mr. Chairman and members of the committee. I'm Beth Courtney, president and CEO of Louisiana Public Broadcasting. We oporate six stations statewide and an affiliated station in New Orleans, as well as more than 100 satellite receiver sites at high schools and technical colleges throughout Louisiana. I am also the vice-chairman of the Beard of Trustees of America's Public Television Stations. Thank you for the opportunity to testify on H.R. 4067 the "Public Broadcasting Reform Act of 1998".

On behalf of APTS' member stations I want to thank Chairman Tauzin and Ranking Member Markey for introducing this bill. The public broadcasting community is anxious to work with the committee on this legislation that will reauthorize the Corporation for Public Broadcasting and the Public Broadcasting Facilities Program (PTFP) and establish a new grant program to assist public broadcasting stations in their transition to digital broadcasting.

In remarks to the PBS annual meeting in June, Chairman Tauzin stated that it was his intent that this bill be the beginning vehicle for discussion with the public broadcasting community and that it would lay important groundwork for passage of legislation early next congress. We view this hearing as another important step in that process and thank the chairman for holding the hearing.

H.R. 4067, when enacted, will authorize three programs critical to the future of public television:

The authorization of funds for the Corporation for Public Broadcasting is the cornerstone of public broadcasting revenue. Public television supports the authorization level for the Corporation contained in this bill.

Since 1968, the federal government has provided financial support to the public broadcasting system through an annual appropriation to CPB to local public television and radio stations for station operations and programming. These community service grants (CSGs) provide, on average, one sixth of the revenue for a public television station. This figure varies widely, however. Many small rural stations depend on federal support for 30 percent of their operating budgets.

This federal support will enable public broadcasting to continue to serve our nation's citizens and maintain its core principles. These principles are:

- noncommercial character with an educational mission,
- creation and delivery of programming of unequaled quality and excellence,
- editorial integrity and independence,
- PTV's adaptation of new technologies to educational and public service purposes,
- universal access to our services, and
- local ownership, control and focus of public television stations.

The second critical element to the future of public broadcasting in this bill is the digital transition authorization. Public television thanks the sponsors of the legislation for the inclusion of language to authorize a grant program to assist public broadcast stations in the transition to digital broadcast technology.

Congress has mandated the conversion to digital and the Federal Communications Commission has set a deadline of 2003 for public television stations to broadcast in the digital format. Digital technology is not a frill; it's a technological imperative. Since the FCC is requiring all television stations to convert to digital programming by 2003, public broadcasters are obliged to make unprecedented investments in new transmission and production equipment.

Public broadcasters estimate that the costs to convert public radio and television to digital technology will be $1.7 billion. Unlike commercial broadcasters, public broadcasters are nonprofit or state and local government entities that rely on a grassroots funding structure. Public broadcasting's support comes from a combination of federal and non-federal sources, including individual viewers and listeners, foundations and businesses, colleges and universities and state and local governments.

Because of their nonprofit status and grassroots funding structure, stations are constrained in their ability to finance major capital expenditures such as the digital investment. Unlike their commercial counterparts, public stations are unable to pass along their costs to their customers. Most public broadcast stations cannot take out capital loans, and many, by law, must have balanced budgets on an annual basis and may not maintain cash reserves. Given these constraints, stations cannot use the typical mechanisms available to commercial entities to fund a major capital expenditure.

Public broadcasters simply will not be able to make the transition to digital without federal support. Almost half of all public television licensees (86 of 177) will incur transition costs that exceed their projected annual revenues.

A federal investment in public television's digital transition is critical to ensure that all citizens of the United States have access to public telecommunications services through digital technology. As discussed in more detail below, the benefits to the public will be immeasurable. Digital technology will enable public broadcasting to expand and enhance its educational services and better reach those audiences who because of economic, geographic, physical, cultural or language barriers have been left behind by the commercial marketplace.

The third authorization provision contained within this bill is for the Public Telecommunications Facilities Program (PTFP). Congress has a long and significant history in helping public broadcasting fund capital investments. The PTFP program, housed at the National Telecommunications and Information Administration (NTIA) in the Department of Commerce, has helped fund the equipment needs of public radio and television stations for over 36 years. In addition, between 1991 and 1993 Congress authorized and appropriated funds for the Public Broadcasting Satellite Interconnection Fund that funded the cost of our satellite and the necessary equipment at the local stations to receive the satellite signal.

Public broadcasters have always been leaders in making use of new technologies for public service. We invented closed captioning and descriptive video services and pioneered satellite delivery of broadcast television. Public broadcasters once again have a vision of what new technology can deliver. We look forward to developing further applications of new technology to educate and enlighten all Americans.

It is our hope that PTFP will continue to assist public broadcasters with their equipment needs. While the majority of the federal funding for the digital transition would come through CPB, we believe the PTFP program should supplement the CPB digital funding and provide digital grants to meet the needs of rural or hardship sole-service stations. There will be a period of at least three years when stations will have to maintain both an analog and a digital broadcast. Some PTFP funds will also be necessary during the transition from analog to digital to meet the continuing analog equipment needs of public television and radio stations.

The authorization of both CPB digital grants and PTFP grants, if appropriated at the levels authorized, would provide the federal cornerstone upon which public broadcasters would work to raise the balance of roughly $1 billion needed for the digital conversion. A commitment of federal funds would provide the critical seed money so important in stations' efforts to secure grants from state and local governments, to launch capital campaigns in their communities and to attract foundation and underwriter support.

The combination of these three essential grant programs will assist public broadcasting in continuing its public service mission in the digital age.

Community Service Leadership

With federal support, public broadcasting will provide the following services through these new digital technologies:

- *Multicasting* will enable public broadcasting to extend the reach of its educational services by enabling stations to broadcast four or more separate, but simultaneous, program streams. Potential channels might include: a preschool Ready to Learn service; K-12 instructional programming; GED and college credit telecourses; workforce training; local public affairs; or popular how-to shows.
- The DTV signal will give public television the ability to transmit *computer information and data* over-the-air, providing another powerful tool for public television stations to expand their educational missions. Stations will have the capacity to deliver course-related materials to teachers and studente, program guide information, and selected portions of the World Wide Web over-the-air to homes and schools. End users will be able to download this information instantaneously, using a television set converter, computer or a digital television receiver.
- *High Definition Television* (HDTV) will significantly enhance the beauty and detail of public broadcasting's signature programming in science and nature, performing arts, science, drama and travel.

In addition to these new services, many of our current services can be enhanced in the digital age:

Serving Children

Our educational programming remains the first choice of children, parents and teachers. Research proves that children raised on Sesame Street and other public television programs perform better in school. Public television's Ready to Learn project is centered around a daytime block of children's programming. Local stations have expanded the value of these programs by providing outreach services to children and their parents and caregivers to help them use public television as an effective learning tool. Over 450 workshops for parents and caregivers, benefiting over 70,000 children, have been sponsored by local stations.

Serving the Local Economy

GED ON TV is an excellent example of what public television does best. Produced by the Kentucky Network and currently offered by 54 percent of public television stations, GED ON TV has enabled nearly two million adults to acquire a high school equivalency certificate. Recent figures from the Bureau of Labor Statistics indicate that citizens with a high school diploma or equivalency contribute $4980 more per year to their state's economy than do high school dropouts. That's almost $10 billion added to our nation's economy annually. Multiply that by the 30 or more years American's spend in the workforce.

Bringing the World into Schools

Electronic field trips, produced by Kentucky Education Television have allowed an average of 550 classrooms across the state to visit Mammoth Cave, a working horse farm, a newspaper and an underground Kentucky coal mine. Other electronic field trips, produced by public television, have taken students to such exciting locales as the South Pole and Colonial Williamsburg.

Serving Working Adults

Two thousand colleges and universities are using public television's Adult Learning Service (ALS). In the last 15 years, over 3.5 million adults have participated in public television's ALS. In addition, local public television stations provide over 400,000 tuition-paying students a chance to earn a college degree through television each year. These are generally older students who live off campus, are employed and have family responsibilities. Public television helps them move ahead by making a college degree accessible.

These are but of few examples of how digital capability will enable public broadcasting to reach its full public service potential.

Commission for the Future of Public Broadcasting. We applaud Chairman Tauzin for his vision of providing for a long term, stable source of funding for public broadcasting that replaces our current process of annual appropriations. In a document entitled "The Road to Self Sufficiency" presented in 1995 to the 104th Congress, APTS, with PBS and NPR, urged congress to establish and capitalize a Public Broadcasting Trust Fund. Adequately capitalized, such a Fund, could generate revenue sufficient to support continued operations of public television stations, with the goal of eventually replacing annual appropriations.

Public television stations support the establishment of a Commission to analyze how such a fund could be structured and capitalized and how public broadcasting's use of new technologies, including digital, can be supported. These issues are critical to the future of public broadcasting. They are also difficult and complex. To even begin to tackle the range of issues proposed for the Commission and formulate workable recommendations, the Commission will need a basic understanding of how current public broadcast stations deliver services to the American public.

To facilitate more efficient and fully informed deliberations, we urge the Committee to include on the Commission one member appointed by the public television stations. A station appointed member on the Commission can educate the Commission about public broadcasting, can ensure that the Commission operates with realistic assumptions about public broadcasting, and can facilitate communication with and acceptance of the Commission's recommendations among public television stations.

We are also concerned that the 120-day time period for the Commission to report to congress is too short given the complexity of the issues before the Commission. The inability of the Gore Commission—which was tasked with a single, relatively focussed issue—to submit a recommendation within its original eight-month deadline is instructive. While we certainly understand the committee's desire to act quickly, the 120-day deadline will make it very difficult, if not impossible, for the Commission to become fully educated on our issues, to complete any necessary research, discuss and reach a consensus recommendation on the many issues outlined in the bill.

Finally, we urge the Committee to include in the Commission's study two additional concepts. First, as currently proposed, the bill repeatedly articulates "providing support for one station per market" as an objective of the study. We ask that the committee recognize as a corollary to that objective the need to preserve diverse educational services to the American public. Second, we urge the Commission to look carefully at the need for diverse sources of funding for public television.

Amendments to Public Telecommunications Provisions of the Communications Act The bill as proposed would also put into affect immediately a series of changes to the Communications Act that will directly impact on the revenue available to public television stations. We hope to be able to work with the committee to either modify these provisions or refer them to the Commission for analysis and recommendations.

Use of Business or Institutional Logograms

The proposed modification of Section 399A of the Communications Act would have an immediate and severe impact on the ability of public broadcast stations to generate underwriting revenue. Underwriting revenue constitutes $291 million, 15 percent of public broadcasting's total revenue of nearly $2 billion. This funding source slightly exceeds the federal government's contribution of 14 percent.

Limiting underwriting messages to merely identifying the sponsor of the program would, as a practical matter, seriously erode this critical source of revenue for public broadcasting. Public broadcasters are losing potential underwriting dollars today—even under the current enhanced underwriting rules—because many underwriters find these rules too restrictive. The proposed restrictions would so severely diminish the value of the underwriting announcements that it would be extremely difficult to retain and attract underwriting support.

The proposed amendment would turn back the clock to pre-1981 rules. In 1981, the FCC overturned prior restrictions on "name only" donor acknowledgments. The new rules permitted a station to use a corporate logo and other nonpromotional information about the donor including location and identification of product lines. The FCC recognized that "substantial funding for public broadcast programming is derived from business" and that "acknowledgment of those funds is proper and possibly necessary to assure the continuation of such funding." [1]

In the Public Broadcasting Act of 1981, Congress codified the expanded underwriting rules devised by the FCC.[2] It specifically permitted public broadcasters to identify corporate underwriters by name, business location and logogram or slogan. Congress' intent was to "facilitate and encourage the efforts of public broadcast licensees to seek and develop new sources of non-federal revenue which will be necessary for the long term support of the system as federal funding is reduced." [3]

Orders issued by the FCC since the 1981 Act have drawn the line between prohibiting impermissible product promotion and advertising, while at the same time allowing for the development of this important source of non-federal funding. As Congress and the FCC envisioned, underwriting has become a critical component of public broadcasting's overall funding structure. To abruptly eliminate this source of revenue, without an immediate substitute, would jeopardize public broadcasting's service to the American public. To do so at this critical juncture in public broadcasting's history, when it faces the immediate and daunting challenge of converting to digital broadcast facilities, would be even more damaging to public broadcasting.

We understand congressional intent to address the "creeping commercialization" of public broadcasting. But we submit that turning the clock back to pre-1981 underwriting rules is not the answer. Enforcement of the FCC's established and carefully drawn underwriting rules will maintain the balance that Congress in 1981 originally intended—to encourage this important source of nonfederal funding, while at the same time prohibit promotional messages on public broadcasting.

Incentives for Voluntary Consolidation

APTS and its member stations endorse the concept of creating incentives for consolidation and collaboration aimed at achieving greater efficiencies of operations among our nation's public television stations. However, we question whether the proposed amendment may be premature given the objectives laid out for the Commission in the bill.

The proposed legislation would task the Commission with analyzing and making recommendations regarding limiting operating assistance and digital support to one station per market. The proposed incentive provision would appear to work as intended only if the federal support were limited to one grant per market. Adopting the incentive provision prior to the Commission's full consideration and recommendation may be premature and not likely to achieve the desired goal. Given the relationship between the Commission's study and the incentive provisions, we urge the Committee to defer adoption of this provision and refer it to the Commission for consideration.

We are also concerned that the incentives, as drafted, encourage the relinquishment of spectrum reserved for noncommercial purposes. Under the proposed incentive provision, overlapping public broadcast stations that voluntarily reduce to *a single station* under a *single license* may receive 150 percent of the funds provided to a single station. We are concerned that this provides incentives for stations to relinquish noncommercial spectrum. We respectfully request that, if the incentive provision is retained in the bill, the Committee consider reformulating the incentive to reward the efficient delivery of more public broadcasting services. Specifically, we recommend that if two overlapping stations voluntarily agree to consolidate and operate two stations providing diverse public broadcast services under a single license and single operational structure, the single licensee should receive 150% of the amount that each station would receive if it operated independently. This formulation would encourage efficient operation, expanded public broadcast services, and preservation of noncommercial spectrum.

Congressional Leadership

Congress has made a very wise investment in public broadcasting. You have helped us improve millions of Americans lives every day. We hope that you will continue this support in assisting the industry into the digital age.

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[1] Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, 86 F.C.C. 2d 141 (1981).

[2] Pub. L. No. 97-35, section 399A & B, 95 Stat.357, 730-31 (codified at 47 U.S.C. section 399 a & b (1988).

[3] H.R. Rep. No. 97-82, 97th Cong. 1st Sess. (1981).

On behalf of the nation's public television stations, we look forward to working with you to ensure that we have the financial resources to continue to provide the American people free access to quality, noncommercial educational television. Thank you for this opportunity to present public television's views on H.R. 4067. I would be pleased to answer any questions.

Mr. TAUZIN. Thank you, Beth, you notice I let you go way over time. And there is a quick retort, you have to erase that blooper from the tax debate.

Ms. COURTNEY. It is a deal.

Mr. TAUZIN. Mr. Price?

STATEMENT OF MONROE E. PRICE

Mr. PRICE. Thank you. It is great to be here, and I appreciate the opportunity to testify before such a distinguished committee and also to follow such a charming and knowledgeable commentator as Beth Courtney. I don't represent segments of public broadcasting. If I represent anyone, it is the very small niche community of law professors who write about media law policies.

I think that this bill represents something that is wonderful about this table. It is a new spirit of cooperation between the Congress and the leadership of the Congress and the American Public Broadcasting administration. And I think that is really something which was totally missing a few years ago. And I think you have reestablished that and the team here has reestablished that. And I think that is really a wonderful thing. And I think it is represented in the bill itself.

In terms of—I was thinking as I was walking over here about the monuments on the Hill, the buildings that are named after Congressmen, the parks, et cetera, and the way this fund is like a monument. It is something that people have thought about and worked for for many years. If it can be accomplished, it is a kind of a fiscal, it doesn't have the kind of marble facades, but it is kind of a fiscal monument, and I think that is great.

The bill itself does, as you have said, three things, which I think are amazing to do together; stabilizing and depoliticizing the funding of the public telecommunications function; taking steps dramatically to improve the operation of the public television system and public broadcasting system; and third, in a way reducing the hypocrisy that exists in the operation of the commercial television system by substituting a tax or fee for the performance of weak, sometimes constitutionally suspect and ever vanishing public interest obligations.

What I think the bill does is do all three things together; it is like Evers to Tinkers to Chance. The Congress tries to use the leverage of the funding solution to achieve meaningful reform in the operation of the public broadcasting system. And it does so simultaneously with building a more independent commercial broadcasting system. So the idea that these three things work together is pretty amazing.

I do have some comments that are in my draft, but I would like just to mention specific ones. One is that it seems to be that the commission's mandate could be somewhat broader. There is a focus on the overlap function, but I think that one of the things that the commission can do, and this follows on quality time and some of the other studies that have been done, is try to see the kinds of marketplace pressures, not in terms of becoming more commercial, that have characterized the tremendous change in public service, public broadcasting around the world and commercial broadcasting enterprises in the United States.

Every network, every medium has been totally transformed structurally to take advantage of the new technology. Public broadcasting has been shielded in terms of its structure. It was—it is still—and the bill to some extent does not necessarily move it way beyond the kind of structure it currently has. And I think that that is an important thing to do.

Mr. TAUZIN. If you don't mind, explain that just a bit more.

Mr. PRICE. If you take, for example, sort of what has happened to the networks, the networks—at least ABC and NBC's decision to get involved in cable television, what is it that prevented public broadcasting from making the same kinds of innovations, what was it about their inward looking nature, the idea of the particular stations, the particular structure that said, we are not forced to develop new channels. In a certain sense must carry, which was essential for broadcasting, protected it from marketplace pressures.

It didn't have to redefine itself because in a sense Congress said we are going to give you the cable slots. It seems to me the question of how large scale enterprises are managed as to what kind of consolidation takes place is something that characterizes every multiple station ownership. We just have—I just read the idea that you should be able to reach 50 percent of the market, rather than 35 percent of the market. That notion of scale as an element of adapting to new technology has to be reflected in the thinking about public broadcasting as well, and to some extent it is.

I think that PBS and CPB have tried to work at that, amazingly, but it has been—it hasn't been able to—it has been somewhat immunized from the kinds of pressures that have—and maybe that is good, but it has been immunized from some of the pressures that have affected public broadcasting. A couple of other smaller, maybe big points. One is on the funding provision. I have some questions about the pay or play aspects of the commercial replacement.

I just quote Action for Children's Television; 58F, Third, 654, which said, Judge Buckley said that the distinction drawn by Congress between two categories of broadcasters, and here the categories would be those that buy their way out and those that don't buy their way out, bears no apparent relationship to the compelling government interest in the way that the law is intended to operation. So if you take the Children's Television Act of 1990, broadcasters could buy their way out by funding public service broadcasters to do children's television.

That is probably okay. But the idea that a commercial broadcaster in Peoria can buy its way out of public interest obligations by funding something that may not occur in Peoria may have some problems, and I just flag it. It is something that may require more careful findings by Congress and more careful analysis as a sort of basis for Congressional action. So that would be a second thing.

The third and last point I will make is that I think that if you authorize the transfer of public service stations, noncommercial stations to commercial purposes, you add tremendous value to the asset, and that is an asset, a part of the asset that the Federal

Government should recapture. I think if the opening of environmental lands for oil drilling where the State or the Federal Government gets 90 percent of the proceeds by adding the value to opening it up, and I say that is more of the philosophy that if you are going to allow these transfers, I am not sure you should, that you should think about that as added Federal value that should be recaptured as opposed to only the recapture of investment as a model for determining the contribution to the fund.

[The prepared statement of Monroe E. Price follows:]

PREPARED STATEMENT OF MONROE E. PRICE, CARDOZO LAW SCHOOL

I appreciate greatly the opportunity to testify before this distinguished Subcommittee on H.R. 4067, the Public Broadcasting Reform Act of 1998. This legislative proposal is one of the most ambitious and important, I think, in the history of broadcasting. In one fell swoop, it seeks to deal with three critical issues, issues that are usually treated separately, but which, as this legislation dramatizes, benefit from being treated together. These are: 1) stabilizing and depoliticizing the funding for the public telecommunications function in the United States; 2) taking steps dramatically to improve the operation of the public telecommunications system; and 3) reducing the hypocrisy that exists in the operation of the commercial television system by substituting a tax or fee for the performance of weak, sometimes constitutionally suspect and ever-vanishing public interest obligations. This is a great deal for one law, especially one so brief, to seek to accomplish. I laud the Chair and the Ranking Democrat for the ambition and resolve that have gone into the bill as introduced.

The bill is like a triple play—Evers to Tinkers to Chance. The Congress would use the leverage of a substantial funding solution to achieve meaningful reform in the operation of the public broadcasting system. It would create a more independent commercial broadcasting system by extracting the funds from that sector to build the endowment necessary for that leverage.

I am submitting, as an appendix to this testimony, an essay I recently wrote for a book on Public Television in America, done for the Bertelsmann Foundation. My conclusion there reflects the ambition of the proposed legislation: for public broadcasting to flourish, for new technologies to provide opportunities for substantial growth, it is necessary to transform public broadcasters. The legislation recognizes that without so complicated a set of tradeoffs, the current mechanism and system will merely protect the existing players and not promote the goal of public broadcasting which consists of enriching American society. In a world in which there is intense reorganization so as to maximize the potential gains from technology shifts, the greatest danger to public broadcasting could be its structural inability to react adequately to opportunities provided.

Public broadcasting has largely been shielded from the vast changes in the marketplace, and not always for the good. There is no PBS equivalent of the Disney acquisition of ABC or the Time Warner merger with Turner. The point here is not to favor media concentration, but to argue that structural changes in the commercial sector have been necessary to cope with the challenges of the new technology. Most of the commercial networks have developed cable television channels. Public broadcasting has not been required to develop similar products. It has maintained its niche in a time of economic, political and cultural assault. Given all the political turmoil that public television has faced, maintaining and slightly improving the status quo is more than could have been expected.

I think the main thrust of the proposed legislation is wise: the leverage of more secure funding is used to subject the public broadcasting systems to the challenges of reorganization. What that reorganization should be is another question: in some cases it might result in subjecting some existing licensees, or, put differently, it might result in giving existing licensees more options to convert their license to a different kind of asset. Overall, it may lead to a new kind of governance, a new capacity to engage in global strategies, as well as a more secure funding base. That is why the legislation you propose is so welcome.

I have, however, a few comments on the bill.

1. *Scope of Restructuring Alternatives.* I think the bill limits, too much, the options open to the Commission for reform. The focus is on a one-to-a-market solution as a means of redeploying federal resources and reducing overlap. The Commission should examine whether a one-to-a-market approach makes sense in some

markets, but that should be only part of its inquiry. I would propose language somewhat like the following to enlarge the scope of Commission inquiry:

The Commission shall conduct a study to identify and analyze various options for actions to provide a restructuring of the public broadcasting system to more efficiently and effectively take advantage of the needs and opportunities presented by a changed technological environment. Such survey shall include, but not be limited to:

a) *examining ways of reducing unnecessary overlap including the limitation, in some markets, of financing to the equivalent of one television per market;*
b) *examining new ownership patterns for noncommercial licensees;*
c) *encouraging, where appropriate, the reduction or elimination of simultaneous broadcasting of identical programming and unnecessarily duplicative broadcasting;*
d) *examining conditions in which a noncommercial license might be transferred either to another noncommercial licensee or to a commercial licensee including conditions that might be imposed on the proceeds of such transfers; and*
e) *examining such other alternatives that the Commission consider desirable to achieve the most effective, efficient fulfillment of a public telecommunications system in the United States to carry out its noncommercial mission.*

2. *Funding the "Endowment"* I would amend Section 4 to study other sources of funds for an endowment, including a transfer tax for broadcasting licenses, a tax on spectrum or a tax on the public offerings of broadcast properties. There should be the leeway to consider the long-proffered proposal of Henry Geller, who has been a lonely voice for obtaining funds from commercial broadcasters to fund public telecommunications in lieu of public interest obligations.
3. *Pay or Play*. I would insert the word "specific" before the word "obligations" in Section 4. The bill does not make it clear whether the fee would be in lieu of some or all of such public interest obligations. The Commission should have the opportunity to consider which of these alternatives is the appropriate one.

I also believe it is important for the Subcommittee, as it contemplates the possibility of trading off public interest obligations for contributions to a Fund, to be sensitive to the continuing pressure to reduce such public interest obligations. It would be a Pyrrhic victory if the Fund existed in an environment in which there was inadequate incentive for the commercial broadcasters to participate.

Proceeds from the transfer of licenses. I think more options should be given to the Commission to consider recommendations as to the proceeds from the transfer of what are now non-commercial licenses. If the Congress authorizes the recharacterization of educational licenses, thereby adding substantially to their market value, some portion of that value can be captured for the endowment fund. If proceeds remain with the current licensees, it should be limited to public telecommunications uses.

4. *The restructuring of the Corporation for Public Broadcasting*. One element of the proposed legislation seems to me the refining and strengthening of a national strategic role and institution to perform that role. Here, I can do no better than quote Eli Evans, the President of the Reason Foundation and a veteran of the Carnegie Commission and all that has followed. In QUALITY TIME?, the Twentieth Century Fund Report on Public Television, he wrote that "A new public telecommunications entity should be established, which might be called a National Endowment for Public Telecommunications... It must bo visible, prestigious, elevated as a public-private partnership, entrusted with the destiny of the system, and able to take the long view beyond the self-interest of stations... Rather than gradually making a transition from the present structure, it is time to cut ties with the past and begin anew."

I appreciate the opportunity to present my views and urge the Subcommittee to move forward with this important legislation.

Mr. TAUZIN. Thank you very much.

Again, let me thank you all. It was very interesting comments, and I will come back to you in just a while. But the ranking minority member has arrived, and I know he is still hurting from that Red Sox loss. But I just want to go to him first and make a statement and we will get Q and As. My good friend, Mr. Markey, from Massachusetts.

Mr. MARKEY. I was going to watch the Yankees every day this week. I had nothing else to do. The Judiciary Committee is the only activity. I needed some counterprogramming on my television, and the same way you have counterprogrammed this to the Judiciary Committee hearing this morning. And as usual PBS has provided good solid, alternative programming to mainstream media is covering right down the corridor.

I want to commend you for this hearing, and I am quite honored to have joined you in cosponsoring the Public Broadcasting and Reform Act of 1998. I believe this legislation underscores the bipartisan support that public broadcasting enjoys throughout America. In short, the legislation authorizes increased funding for the CPB at $475 million a year. In addition, the bill also authorizes an additional boost in funding to assist in converting public broadcasting stations to digital technology at $475 million over a 5-year period.

This additional money for digital conversion is vitally important as the Federal Communications Commission has set a deadline of 2003 for public broadcasting stations to go digital. It would be my hope that we can begin to provide additional money for digital technology as soon as possible, because the public stations are under a deadline to go digital and must do so without the financial resources available to them that are available to commercial stations.

In addition, the bill provides, contains provisions that will mitigate against the creeping commercialism that we have seen from some public broadcasting entities in recent years by restricting the method by which stations acknowledge corporate underwriting and limiting such messages to 10 seconds in duration.

The bill also creates a special blue ribbon panel to explore and analyze in detail various proposals for long-term funding and further reform of the public broadcast system. I believe that the legislation reinforces the firm commitment in Congress to providing an electronic oasis for learning and information in what has been called the vast wasteland in commercial television. Telecommunications technology can only empower those who can obtain it or those who can afford to get it.

At a cost of just over $1 per year per person, what parents and kids get from public TV and public radio is an incredible bargain. To me the question is not can we afford it, but rather can we afford to lose it? The Tauzin-Markey bill articulates our view that public broadcasting must continue to be financially supported and that the system should be reformed to reinforce its noncommercial mission and that long-term funding mechanisms and further reform ought to be explored by a special panel that recommends further proposals to Congress to safeguard this national treasure.

Again I want to thank you, Mr. Chairman, for your hard work and the attention that you have brought to this issue. And I really look forward to working with you in the coming months toward the goal of constructing national legislation in this area.

Mr. TAUZIN. I thank my friend and pledge to him our continued cooperative work. As I said when we opened the session, Mr. Markey, we are going to put this on a high burner for early in the next Congress, and I need your help to make sure that we get the entire committee lined up behind this.

Let me recognize myself for a round of questions first, and let me foc on the educational aspects because it is an interesting area move both public television and radio into a digital era. As you pointed out, Beth, it is really not just a problem, it is a huge opportunity——

Ms. COURTNEY. Right.

Mr. TAUZIN. [continuing] to do some things. And what we are sensing in the marketplace is technologies converge and as companies that perform communications services merge and consolidate in order to offer more integrated systems to consumers, we are sensing that with television, the same thing may be true in regards to your enhanced digital television offering, Mr. Hollar, and that in regard to children it may offer opportunities that even computers today have trouble offering, because most kids still in America don't have computers at home, but they do have television. They have television in school, television at home and the convergence and merger of computer and computer language to the television sort of opens up some awfully nice concepts, not only of learning in the school and learning in a library, but transferring that learning into the home with the right kind of hardware-software mix and the right kind of program delivered by the right kind of people.

Do you sense that same capacity, that same opportunity that some of us are sensing with the merger and the convergence of these technologies? If you want to hit it real quick for me, Beth.

Ms. COURTNEY. I will take a shot. Absolutely. We are spending more of our time these days in our new ventures looking at how we integrate the computer activity with the production of video. We are developing two classes that could be delivered through the satellite education consortium, one on reading across the curriculum and the other one called environmental tackle box on environmental education. What we do is we do a video portion of it. You do the Internet Web sites. You do chat rooms with teachers. At the same time you are going—we hope it will be able to imbed data on to our screen that we couldn't do previously.

Mr. TAUZIN. Here is what I am getting at though. I understand that public broadcasters are going to integrate with the Internet and with computer screens in the school. What I am asking is a reverse of that. Do you sense an opportunity to use television itself as the—as the tool, as the instrument, not the computer responded to or the television itself with appropriate forms of interactive digital enhanced services as to how—you sort of hinted at it—that could in fact also extend the learning process into the home where the child in Louisiana, for example, may not have a parent who knows how to read and write "parlez vous francais," but nevertheless in this new world of digital broadcasting, public broadcasters working with educational authorities may be able to reach kids in a way to help them with their homework, helping through a learning experience at home.

Is that part of the thinking and part of the new reform?

Ms. COURTNEY. I think John sort of addressed what we have done. But I was chair of the education task force at PBS. That is what we spent a lot of time talking about, just what you are saying, envisioning that, and I think this is your plan.

Mr. TAUZIN. Answer that quick, John.

Mr. HOLLAR. That is absolutely right, Mr. Chairman, and you have touched on the all the key elements. First of all, it is universal. This is available to everyone. It doesn't require an Internet connection, it doesn't require a computer, it is pervasive and it is everywhere. Second, as Beth pointed out, at a minimum in the digital program, public television broadcasters can be multichanneled. They can have a channel devoted to adult learning 24 hours a day. We can have a channel devoted to children, especially preschoolers, 24 hours a day. Local stations can have a channel devoted to teacher training 24 hours a day. So a variety of services.

Mr. TAUZIN. And you can deliver it in different ways. You can deliver it over there, you can deliver it through the cable systems. You can deliver it different ways.

Mr. Price raises a question as we were forming the structure of public broadcasting, both radio and television, should we think about letting public broadcasters do what commercial broadcasters are doing and commercial telecommunications entities do, and that is restructure themselves around not only what they do, but how they deliver it and getting into these other entities.

Is that a good idea or should we continue, as Mr. Price suggested may be a good idea, shelter them from those kind of structured pressures? Mr. Price?

Mr. PRICE. I put the question in the same way but slightly differently, of course. These opportunities are here and different opportunities have always been there. One question is what are the impediments in the current structure to having them occur and how can those impediments, if any, be dealt with.

Mr. TAUZIN. Are the impediments there for good reason and should they be maintained or should we open the door to public broadcasting and getting into these areas the same way public broadcasting crept into commercial broadcast advertisements as a source of funding.

In short, Mr. Price raises that question, should we let the public broadcast asset expand and grow and seek other revenues in alternative forms and structures than in the traditional broadcast form? We haven't touched this. We have got to touch it. What do we do with regards to the capacity of this new spectrum to be used in other commercial applications and broadband data services perhaps, interactive services somewhere?

Do we allow the public broadcast stations, both radio and television, to get into these other services? What about the spectrum fees we required in the 1996 act, do we waive those fees for public broadcasters so they can have that money and keep it without sending it back to the Federal Government? Do we allow public broadcasting to get into competition with these other forms of communications, or do we keep these impediments in place?

A lot of questions there. Does anybody want to hit of any of them?

Mr. COONROD. I seem to be the designated responder to impossible questions, Mr. Chairman. There are a couple of principles though that I think are important as we ask those questions, and the first one is the noncommercial nature of the medium that we are a part of. And it is entirely appropriate for not for profit institutions, at least we can see many instances of that around the country, not for profit institutions, generating revenues from their—from their mission-related activities, because they provide valuable services in their communities.

So I think if we are thinking about it in those terms, there is a rich—there is a rich vein that we might mine. If we are thinking of it in sort of purely commercial terms, where the commercial activity could put one part of the operation in sort of conflict with another part of the public broadcast operation, then it becomes a much more difficult question.

But particularly in the area of education, there seem to be enormous opportunities that we can explore in ways that public broadcasting stations, national organizations, can provide very valuable services, services that schools and others now pay good money for. And there are ways to do that within the spirit of the mission of public broadcasting and that is an area that we need to——

Mr. TAUZIN. Let me stop you there. I want to yield to my friend in just a second, but in the area of education, of course, education is generally provided in a public non-profit system right now. There is private for-profit education, but most of it is public for non-profit. So allowing you to integrate with and to in effect take part of that action, not as Beth says, just have a piece of the pie, but because you can bring so much to it and they can get a bigger bang for their buck from the education community perhaps through collaboration with you. In a sense that makes good sense.

The question, though, is in terms of other commercial ventures, that may be possible with the public broadcast assets. There you are competing against traditionally commercial ventures, and while it may be a rich vein, you will be, in effect, competing with a public asset against a private company for those riches within the vein. And is that proper and should we even think about allowing you to do that as a way of enhancing the trust fund or enhancing your activity somewhere else. Anyone?

Ms. COURTNEY. As long as all your activities go back into the mission that you are chartered to do, I mean, that is the traditional non-profit, but clearly that is what we do. If we sell a program-related product on a cooking show, I take that money and put it right back into doing a teacher training program, so I think it is a fine line to split, and we really look at it as you are suggesting as we get additional testimony, but my commercial colleagues in our world have no problem with what we do if it is program related. If I started doing—analogy: If I started doing car commercials in my studio, they might have a problem, but if I am doing teacher guides along with another program and you charge the university, that is fine.

Mr. TAUZIN. We have to think where that line goes. Obviously you recall when there was some complaint by commercial broadcasters that public broadcasters were out there bidding against them for commercial available syndicated products, for example. You remember that conflict.

Ms. COURTNEY. I do.

Mr. TAUZIN. I can sense it, if you will, in other areas if we are not careful. And I just ask you to think about it and to focus on it as we move forward. I am going to recognize my friend, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman. I would like to speak about the commercialization of the Public Broadcasting System. We have to remember that it is meant to be a noncommercial and educational system. That is its essential mission and the job is to provide quality programming on both TV and radio in a noncommercial environment and that is what generates the Public Broadcasting Systems' wide popular support and its appeal. It remains, as I said, an electronic oasis in a world which is increasingly beset by tremendous commercial pressures to lower standards across the board.

I think that is one of the reasons why the public generally holds the media in such low regard these days. They sense the lowering of standards that they associate with high-quality programming. So if we look at this week's and last week's Jerry Springer, here's what we have at noontime. Over the last 1½ weeks, here are the programs you could have seen at noon here in Washington: strippers, home wreckers, rejected lovers, woman leaves her husband for his father, infidelity confessed, triangles—and I am not talking about geometry—infidelity, and threesomes.

Mr. TAUZIN. Sort of like DC.

Mr. MARKEY. It is conveniently on the air opposite kids' songs and Reading Rainbow at the same time. And the schedule for WETA from 6 o'clock in the morning is Arthur, Sesame Street, Arthur, Barney, Teletubbies, Comfy Couch, Kid Song, Sesame Street, Mr. Rogers, Reading Rainbow, Windsey's House, Theater Tugboat, Teletubbies, Nature, Antiques Road Show, Any Place Wild, Crafts, Creature, Wishbone, Arthur, Arthur, Barney and Friends, and then you hit the business report at 6:30. And channel 22 has a similar kind of programming which people in this viewing area can also pick up. So clearly you provide a very powerful alternative set of programs which parents can turn to.

And the issue is what is the path now that public broadcasting will take as the years go by with the pressure of commercialization. This Jerry Springer program couldn't have been on 15 years ago. Broadcast general managers would have said absolutely under no circumstance would a program like that ever appear. Now they bid against each other in local markets, bid against each other, and if they can't get it, they bid for another programming—another program that is as close to it as they can get. So either the old general managers have to get booted upstairs because they won't conform their views to this new marketplace or they change their views so they can keep their job. That is the world in which we live and that is known as commercial broadcast.

So in the public broadcasting area in recent years, we have seen that many of the popular programs have corporate underwriting. Kellogg's Frosted Flakes and Chuck E. Cheese for Barney, Libby's Juicy Juice and the Gap for Arthur, and Discovery Zone Indoor Playgrounds recently for Sesame Street.

In my view, many of these underwriting acknowledgments smack too much of regular TV advertising, yet the worst idea I have heard recently has been this notion, and praise by a few stations, which is to run a commercial lineup on weekend nights. Commercial public television is an oxymoron, don't you think? Let's hear it from you, Mr. Hollar, Mr. Coonrod. Let's start down here and maybe you can give us a little discussion here.

Mr. COONROD. Public television is noncommercial educational television. That is why the public supports it. That is why for many reasons certain corporations are willing to underwrite programs on public television, because it does have that noncommercial educational nature. And that is something that I want to be associated with. It seems to me that that is a given. That is the basis for the licensing and that is the thing that people in the communities support. So I agree with you completely.

Mr. MARKEY. Mr. Hollar.

Mr. HOLLAR. The testimony we submitted today underscores the point that Bob just made, that your bill absolutely affirms, that you want public broadcasting to remain educational and noncommercial, and that is our commitment.

I do want to say you have placed your comments in an interesting context, which is the commercial environment generally. We are under increasing pressure to increase production budgets across the board and we have been working very hard over the last 4 years to do that in a noncommercial way. The budget for national programming at PBS has increased from about 110 to about $165 million over the past 4 years, all of which has come from noncommercial private sources. But be that as it may, $165 million a year for the kind of programming that you just gave us an inventory of, even in the children's space, is a very small budget indeed when you compare it to what commercial studios and commercial networks are now beginning to spend. It is no secret that Fox has just outbid PBS for the Magic School Bus and for Shining Time Station which features Thomas the Tank Engine. We would like to have that not be the case. We would like to have those programs remain on public television. So we are under substantial fiscal pressure to find resources to pay for programming.

Now, I don't mean to suggest by way of response that that condones, as you in your phrase—creeping commercialism, or the look and feel more like a commercial network. I simply mean to say that we are under—we are under some pressure to run 100 miles an hour in every appropriate direction to try to increase funding for the kinds of quality programing that we know that you want us to do.

Mr. MARKEY. Mr. Tauzin and I have tried to be extremely generous in the authorizations we are recommending for Public Broadcasting System so that you would have resources to be able to deal with those issues without having to resort to the kind of commercial activities that would change the personality of your networks. And if you are talking about coffee mugs or licensing fees on Barney dolls, educational video sales, then that is fine; fine creative ways of doing that. But if you are talking about advertisements that make your station look a lot like the Fox network as a way of holding on to the programming which could be bid over to Fox, then that is not what we intend the Public Broadcasting System to be. In fact, we had to pass laws here that mandated that Fox and the other networks have any children television programming at all.

So to a certain extent as they fill up their 3 hours per week, per week, per week, remember that, we are talking about 10 hours per day here. You are talking 60 to 70 hours that you have today for children's television. So if you lose 1 hour or ½ hour, it should not be so significant a hit upon you that it causes us to want to change completely the commercial restrictions which we have historically had on. The bill limits underwriting to 10 seconds and a simple disclosure of who is supporting the program with funding.

You support that restriction, Mr. Hollar?

Mr. HOLLAR. The bill, as I understand it, has an index that would tie these sorts of restrictions to the amount of money that is available in the trust fund or from other sources of funding, which seems to get to the problem that we have been discussing here: Where do the resources come from to begin to replace funding levels from other sources?

My colleague, Beth Courtney from Louisiana, said in her testimony that that kind of restriction does create—it takes us back 15 or 20 years almost, to a different era of funding for public broadcasting when there were essentially three commercial networks and PBS. So I think the question really is this balancing that you have attempted to structure in the bill between the provision of resources for the things that we thought you want us to do on the one hand and income from other sources on the other.

Mr. MARKEY. But again, the reason that we are taking you backwards is we don't like what we are seeing. We don't like Chuck E. Cheese. We don't like this other stuff. We don't like Saturday night turning into a regular broadcast night that looks identical to commercial TV. That is exactly what we are doing and we are tying it to this higher funding level. We are trying to do our best here to help.

So you would not support, is that correct, Mr. Hollar, a 10 percent limitation?

Mr. HOLLAR. All I am saying is this balance the bill attempts to strike between resources coming from areas other than program underwriting and resources that come from program underwriting itself is not—it is not the kind of black and white approach that normally gets put forth in this kind of context, and I think that that is a useful way—we think that is a useful way to go about thinking about the tradeoffs and——

Mr. MARKEY. You wouldn't support a 10 percent restriction, Mr. Hollar?

Mr. HOLLAR. I am sorry?

Mr. MARKEY. You would not support a 10-second restriction? You would support a 10-second restriction?

Mr. HOLLAR. I have said the 10-second restriction in the context of this shifting of resources is an appropriate way——

Mr. MARKEY. Do you agree with that, Mr. Coonrod?

Mr. COONROD. Yes.

Mr. PRICE. I wanted to say it is interesting, this question of the relationship of advertising to public service television is really a global one and it is being dealt with in many different ways in many different countries. It seems to me it would be very good—perhaps the committee is aware of many of these alternatives, but I have noticed, for example, the line that you would draw between underwriting support and identification and children's programming and other kinds of programs is one that is drawn in other countries so that you might have a different rule for the Barneys and the Arthurs than for other kinds of programming. There are countries that have time limitations and time parts on underwriting. There are the complex relationships, for example, in Channel 4 in the U.K. where there is aggressive and credibly interesting public broadcasting that is coupled in some complex way with advertising.

So it seems to me that the point that I think was made, that there are efforts by PBS to look at the guidelines on advertising and other ways of looking at this, might be wise in the Commission as a prelude to deciding do we adopt the 81 approach or do we adopt the more complex approach. That is the only thing I would say.

So there is a lot of learning about this in other parts of the world that might be of interest, and you may know about them.

Mr. MARKEY. Ms. Courtney?

Ms. COURTNEY. I, of course, come from the very conservative side of the public broadcasting family where we have very conservative guidelines. So personally, I don't have any problem. I would tell you in the greater family of public broadcasting, my colleagues that are running more enhanced underwriting don't do it because they want to or want to be commercial broadcasters; it is quite simply they don't have enough resources to do what they need to do. So if we have sufficient grounding that allows us to hold to our mission, I think we are in general in support of it. The problem comes how does that funding then get distributed around the country, too, and that is an additional thing and that is for Mr. Coonrod to look at it. As it goes to CPB, how does it go back out again. So it is a very complex thing as the whole Commission looks at it.

I would say to you, as you say, the very nature that we have is noncommercial broadcasting, and I think that is very important for us to hold on to that mission that makes us unique. On the other hand, I guess the tradeoff is would you like 17 weeks of a pledge drive. That is kind of—in my part of the world, we don't have—we have one Fortune 500 company, so I don't have lots of underwriting floating out there, so that is not part of our strategy. But I think as we look at the overall funding, if you have enough resources, you clearly don't want to do that. But I don't think we have explored just in enforcing the FCC guidelines that we have right now.

Mr. MARKEY. Let me ask you this, Ms. Courtney. If we give you the funding level that is in this bill, is that sufficient in order to be able to then exact a pledge of keeping the underwriting statements to 10 seconds?

Ms. COURTNEY. I think we should—it is fine with me. I would say what we should look at is not—is a complex examination of what do the American people think. Is it 10 seconds or is it doing a commercial they see on Fox? Is it the content of it rather than the length of it? I think it should be short in length, but I would just say to you as a conversation, 10, 15—I think when you get to a 30-second commercial, you are obviously in a commercial commercial. But I think when we examine this, we should look at what constitutes commercialism and what is appropriate.

Mr. MARKEY. If we give you the money, the $475 million for the digital conversion as well, isn't it possible for you to use one of the channels for all your 17 hours a week of commercial—of fund-raising? Can't you multiplex, in other words, so you are doing your fund-raising? Is that possible? You didn't mention that, but isn't that really one of the alternatives that you could provide, and you could keep saying as you are running the——

Ms. COURTNEY. Right. So one commercial-free total——

Mr. MARKEY. Right. And you are raising money over there full-time. Couldn't you do that?

Ms. COURTNEY. That is possible. You think anybody would tune in?

Mr. MARKEY. Well, if you kept telling people they had a moral responsibility to pay them back for showing Frank, Dino, and Sammy over here——

Ms. COURTNEY. Strategy we could try. Sure.

Mr. COONROD. If I might, one other thing to consider is some sort of scale support from CPB. In other words, for stations that accepted a—assuming that the revenues were adequate, stations that accepted a 10-second guideline would receive a greater percentage of support from CPB than stations that didn't. Some way to build some incentive. It may be things like that that we could look at.

Mr. JABLOW. Could I put in two cents for public radio if I may?

Mr. PRICE. You only have 10 seconds, though.

Mr. JABLOW. Which is fine also. The line we draw between ourselves, our commercial counterparts, is very, very thick. We want to keep it that way. We are delivering information programming and culturally enriching programming to an audience. We are not in the business of delivering numbers through advertisers. On the national level right now, we limit our underwriting spots to 10 seconds. On the local level, it is a little bit more variable.

The key difference, I believe, if you look at noncommercial radio programming, is there are averages, an ad during an hour of 2 to 3 minutes of underwriting. In the non-profit sector or the commercial broadcasting area, the average is 16 minutes of advertising per hour. It is a huge difference and we want to keep it that way.

We want to maintain the fact that there is no interruption to our programming, there are no call to actions, that there are no call to purchases, but we need to consult with the stations to see on the local level what makes sense, because it is variable as we go around this country.

Mr. MARKEY. Thank you, Mr. Chairman. I guess what I would say is we don't want any public broadcasting station to go commercial, and we don't want to create incentives for stations to say, all right, we don't need that 10-second limitation. Look at all the money we can raise over here if we have 30-second minute commercials that are just completely—of course, they will have all kinds of people saying that is great. I would love to get around that little restriction.

So the objective which we have, of course, is to not let anyone out. If you are taking this money in any manner, shape, or form, you are a public broadcasting station. And if you don't want to be a public broadcasting station, you should all quit your jobs and go over and work for the local commercial TV station. We are looking for people who are willing to work within that context.

So the intent of the bill really is that balance. We will give you the money to maintain your independence and then you, in turn, have to turn to your association. And I am sorry for the rest of you, but this is the condition that we have got to sign onto if we want this unusually high level of support.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you very much. Let me ask you a question quickly and maybe highlight some of what my friend's and my concerns are when it comes to commercial broadcasting. Could I buy a logogram? Could I, in effect, underwrite a public broadcast segment: Billy Tauzin for Congress? Is that prohibitive? Are we going to go there?

Mr. COONROD. Prohibitive.

Mr. TAUZIN. Is it prohibitive?

Ms. COURTNEY. It is. Are you running?

Mr. TAUZIN. The point I am making is we have already defined some limits, and what Ed and I are talking about is perhaps redefining those limits so we don't take it places it shouldn't go. And I think that is the message I hope everyone hears today.

Let me mention, however, so that—we admit to the hypocrisy here, that I think it is a bit hypocritical of Congress to constantly say to public broadcasters, go raise your money somewhere else, that we are not going to give it to you, and complain because you raise it from people that are willing to give it to you on the condition that you mentioned, some kind of logogram, advertisement.

And so it is incumbent that that balance, that Mr. Hollar said, be there. That is why we have an index in the plan. Mr. Markey and I, we envision in effect a quid pro quo, that we will extract from the commercial broadcast community this commitment to remain special and unique and identifiable as a commercial in an educational structure as opposed to a commercial structure, in turn for providing ways and means to incentivize with dollars the operations of the system without the necessity of turning there. The same is true in terms of competing for programs that otherwise might migrate to commercial broadcasting.

Let me make that point, Mr. Hollar. If you do such a good job with the program that has such great audience attention to it that it becomes virtually viable, I see nothing wrong with that program migrating over to the commercial side. You can go out and invest and invent something new that has value in the public broadcast side that children and adults will feel they can't get from commercially viable television and radio again. That ought to be the process.

See, I am as much offended by the notion of public commercial broadcast as I am with commercial public broadcast. Both of them offend me. And yet in Washington, we have created this hypocritical oxymoron set. On the one hand, we tell commercial broadcasters we want them to perform some of these public functions because they have a public interest in taking this spectrum. We haven't figured out any other way to satisfy that public interest. The bill hints at a different way here. On the other hand, we have said we are not going to give you the money you need to carry out your function so you better go commercial, but we don't like that.

There is a set of oxymorons here that I think the bill hints at maybe we can, as Mr. Price said, in a very synergistic way, resolve simultaneously if we have the will and the political courage here to do it, and I hope we do.

Let me get out a couple of specific questions. Mr. Jablow, you mentioned there is a difference in consolidating public radio stations as opposed to consolidating public television stations. Elaborate. What is the difference?

Mr. JABLOW. Well, as an example in a particular market, you might have——

Mr. TAUZIN. I need to hear you a little bit. Thank you. Is the button on? There you go. A radio man should know those kinds of things.

Mr. JABLOW. So true, Mr. Tauzin. I have always pulled it toward me.

In a public radio market, you might have multiple formats. You might have a jazz station, a classical station, a news talk station, all serving different segments of the population. There is not necessarily one program service that they all provide at the same time. In fact, you see this in the city if you listen to NPR's All Things Considered, which is played one time on a particular station and another time on the other station. So the consolidation is much more complex because of the difference—different audiences we serve and the different formats we provide. It is not a similar model to that of public television.

Mr. TAUZIN. Any of the television reps want to suggest that it is very different or it is not? Ms. Courtney or Mr. Price?

Mr. PRICE. I am not from the segment but I don't think it is different. I think that there, in fact, it is great where you have differentiated public television stations. In New York there is a channel that is operated by the school district, and that is very different from the channel that is operated by the main public television service. And that is great; that is the way it should be.

Ms. COURTNEY. Certainly I would suggest it is the same. We should differentiate. Sometimes you see some of the same programs because, frankly, I was in radio early in my career. It is more expensive to do TV than radio and so you have to use some of the same programs every now and then. But the whole concept of doing alternative services is exactly the same thing in television. Two stations in New Orleans, they were trying to co-locate, sharing the transmitter room and everything.

Mr. TAUZIN. Why can't you do that in radio? It seems to me if television, which is more expensive to produce, could co-locate or even consolidate and do multitasking, why can't radio do the same thing and yet satisfy the needs of various program audiences the same way?

Mr. JABLOW. Radio can do some of that, but the majority of radio programing is localized and the local services that are provided to that audience are key, and that is what is most sustainable to the community.

Mr. TAUZIN. Let's talk about that. I am going to quote Michael Eisner. He has raised some real hackles among TV station affiliates lately. He is in Com Daily today. He has gone on a number of shows like "Today" and "Good Morning America." He is promoting his autobiography, Work in Progress.

And what is changing so much for the stations are his remarks on the Charlie Rose Show on PBS that ABC TV might not need its affiliates. Here is a quote: "When you project yourself 5 years out and you have a digital broadcast spectrum where you can multiplex and time shift, you could do a soap opera at ABC-2 so that people who are not home during the day can see 'All My Children' in prime time."

He is envisioning a digital world where the affiliates are no longer necessary. With multiplexing, ABC theoretically could provide all sorts of new forms by which people could watch Jerry Springer even at night, if that is really what they want to do, as opposed to using the affiliate stations to deliver these systems.

Now, here is the toss question for you. Is public broadcasting similarly going to face in the future pressures to do away with local stations and local production and go to some sort of digital master delivery system, or is the fact that commercial stations are even thinking about doing that a reason for us to focus very diligently upon the local aspects of public broadcasting, particularly as you point out, Mr. Jablow, in radio? It is your softball. Hit it back to me.

Mr. JABLOW. You did provide us a softball. I am happy to swat it for you. It is definitely the latter. What makes us special is our ties to the local community, and it is the blend of the local information, the local music, the local community outreach with the national program service. Without that, I think we are lost, and that is what sets us apart.

Mr. TAUZIN. Or you are going to face pressure not to do that. If we don't provide public funding in a stable trust fund context, where less and less reliance is on the commercial world, if we don't do that, isn't it true that you are going to face increasing pressures to deliver the same program nationally through all the stations locally rather than having a great local input in the stations?

Mr. COONROD. Mr. Chairman, there are those pressures, and we can see them in instances around the country and in specific instances. But the challenge to us as people who try to manage this at a national level is to provide in a digital era the package program feeds that stations can tailor for their own local——

Mr. TAUZIN. You are going to have some of that. Just as the affiliate stations take national programming, the concept of the affiliate station relationship is essentially that. They all share in nationally distributed programming and have it but, nevertheless, have a significant local component that makes them special. That is one of the reasons we defend the affiliate station relationships, is what we experienced when we went to Peoria, Illinois, when the National Weather Bureau disrupted all the local news about where the tornados were located that weekend we were there, to give some standard national bulletin to watch out, there were tornadoes in the area.

Let me say it again: The local stations were giving precise information about where the tornadoes were. They got interrupted by a national feed that said watch out, there are tornadoes near Peoria.

You got a sense of how important it is to have an affiliate station there doing local things. And what I am saying is despite the fact that in a digital world we will naturally share national programming through all the PBS stations around America so that public radio and public television have a great deal of the nationally produced stuff, you will nevertheless continue a big local—you are itching. Say something.

Ms. COURTNEY. I am just itching, since I am the local station sitting here. Let me say two things. One, the fundamental—we talked, Congressman Markey, about what are the characteristics of public broadcasting. Noncommercial is one of them. The second one is we are not a network like ABC, NBC, CBS. We are not. We are an association, an independent.

Mr. TAUZIN. PBS is a network, though, isn't it?

Ms. COURTNEY. We are an association of independent public television stations, and those programs that you see that we share nationally are originating at WGBH in many cases, or WNET; or, in my case, Louisiana has had two documentaries that we produced for the National Program Service this year.

Mr. TAUZIN. But there is a similarity. PBS does distribute national programming, does it not?

Ms. COURTNEY. Absolutely. But I want you to understand, when you look at the local affiliates which have some—since my husband was in commercial broadcasting, I have some experience in this—you know, they have certain fringe times when they program in their local news, but they take the feed coming down all the time. Our responsibility is to be responsible for hours and hours of that feed—I mean, of the programming—and in the digital age, even more so. We aren't worth our salt if we don't just not give lip service to it but do things about our communities. That is our future. That is where we ought to be.

I mean, nobody else is going to do, the problems with crawfish farming, the Formosa termite, or coastal erosion in the Chipola Basin. We are going to do it. I can't expect John to send it to me from Washington, but if I do a fabulous documentary on environmental racism, then I send it back up to share with the rest of the country. That is the give and take of public broadcasting that I think a lot of people don't really understand.

If we do something wonderful in Louisiana that specifically is for our community, and it is the quality that Ed Markey is talking about, Congressman Markey, then we share it with the rest of the country and that is kind of the pull and tug.

Mr. TAUZIN. On the other hand, there is the Jim Lehrer-type show which is distributed nationally. So there is a mix of this. What you are saying is you have a larger component of localism and therefore—I am trying to make a case for you—that if ABC is right, if they are going to lose more and more of that localism and that affiliate station sort of setup in the context of their networks, that this special relationship you all have in terms of generating local programming, sharing it when it is quality and has applications nationwide, is rather special in fact, may become more special in a world where affiliate stations are somehow threatened.

Ms. COURTNEY. We are going to have all kinds of responsibilities. It is a trust we should have.

Mr. TAUZIN. Doesn't the continued commercialization of what you do threaten that? This is my point. If the commercial world says to ABC, move in that direction because it makes better commercial sense, and you continue to move toward commercial funding because we have not funded you properly, set up a trust fund giving you the right resources, aren't the pressures eventually for you to move in that direction too?

Ms. COURTNEY. We all have a chorus of amen to that.

Mr. TAUZIN. Amen, absolutely.

Mr. COONROD. The challenges are really to help—to look at how we can do a better—how we can help stations around the country do a better job of being the important local institutions they are. It is not to try and take from them, that local character, but the challenge really is to see what we can do nationally to help them do that. That is where they are rooted.

Mr. TAUZIN. Well stated. Mr. Markey?

Mr. MARKEY. Thank you, Mr. Chairman. I want to, if I could, discuss digital TV. As we know, digital technology will allow the broadcasters to multiplex their signal and instead of one high-definition signal, to broadcast 3, 4, 5 or more channels in television programming.

Now, I believe that that is a tremendous benefit to the child audience because the public broadcasters will be able to split the signal to cater to the educational needs of children in different age groups. As Ms. Courtney points out in her testimony, there could be a preschool ready-to-learn service, a program for the young school-aged children, an adult education course, a work force training course, all broadcast simultaneously.

My first question is whether during the course of the day, if multiplexing ought to be required of public broadcasters in order to maximize use of the medium. After all, kids don't need HDTV, Barney. Public broadcasters could reach diverse audiences with multiple streams of programming during the day and then switch back in the evening for the signature science, history, and cultural programs to full HDTV.

My second question follows up on the first and it relates to what ought to be the must-carry requirements of cable systems to carry public broadcasting stations. If we want the public broadcasters to make full use of the media and we want taxpayers to help foot part of the bill for converting to digital, then what will be the oglibations of cable systems to carry the digital feed? Will it be just one channel, or if public broadcasters make a more robust use of the digital signal, then should cable companies be required to carry all these fees? Who wants to take the first question? Mr. Hollar.

Mr. HOLLAR. The future you describe is exactly the future that public television stations and we at PBS and our colleagues at CPB envision. It is a world in which we are doing some high-definition broadcasting, probably in prime time, to take advantage of the qualities of that kind of programming, multiplexing during the day for the kinds of multiple services you described. And then a very important piece of this is the data stream, the digital data capabilities of digital which can allow us to send an enormous amount of material with those services both in high-definition and multicasting.

That vision has been so strongly articulated throughout the system and it is so much a part of what we are working on, what stations are working on, what CPB has described, it is not my sense that a requirement necessarily needs to be legislated because the vision in public television is so strong about the need to provide those multiple services for some part of the day, as you have described.

With respect to must-carry, we have been very concerned about the must-carry issue in digital, not only because of what might happen to the ability of stations to provide local service but because cable effectively provides the sole point of access for 7 out of 10 homes in this country. And if those homes and schools are not able to get the services that you just described, then the great promise of digital is probably not going to be realized and the vast investment that you are suggesting that you are about to make is not going to be brought home, literally.

Mr. MARKEY. Does that mean a must-carry of all feeds, Mr. Hollar?

Mr. HOLLAR. Well, that creates—I think we ought to be realistic about that being problematic for——

Mr. MARKEY. What is the answer, then, to the problem?

Mr. HOLLAR. If digital cable is capable of providing the same sort of increase and capacity that digital broadcasting is able to bring about, our view has been why shouldn't we consider some form of mandatory carriage for these kinds of very important services that stations are going to provide.

Mr. MARKEY. Ms. Courtney?

Ms. COURTNEY. Two things. On your first question, although I plan to do multicasting, just as you laid it out, during the day, high definition at night, I think it would be helpful to have the flexibility to do—say, there is an opera that I wanted to do, the full high definition of, for a period of time during the day to go out to classrooms, or I think I would like the flexibility every now and then to do big special sort of things in high definition that would attract a huge school audience or something like that. So I think our intent is there and probably does need a requirement. That is just my judgment on it. On must-carry, absolutely anything you can do to assist, we need.

Mr. PRICE. I just would like to say one thing about the must-carry rule. I think there is a problem for Congress here. I think that basically must-carry should be preferred for public broadcasting over commercial broadcasting. I think there's a real public interest in must-carry of these signals and not as much of one for must-carry of multiplex commercial signals. The Congress has to make the case in the findings for that.

The Court in the Turner case, Sandra Day O'Connor was the only justice who recognized there might be the possibility of a preferential must-carry for noncommercial broadcasters, but she said Congress hasn't made that case. If you look at the act, it doesn't distinguish. It just says you have got to do one and you have got to do the other, but I think this is something where you could make findings and a contribution that would support preferential must-carry for noncommercial broadcasting, and that would be even more valuable than the trust fund.

Mr. HOLLAR. If I could just add one more thing. Carriage of the ancillary data stream that is program related and carries a lot of this educational material apart from the video signal is very important. If that data stream somehow gets stripped off or isn't carried, then a great deal of what we are going to deliver, especially in the educational space, will not be possible over cable. I just wanted to make that clarification.

Mr. MARKEY. The cable companies are going to raise their rates of their subscribers in order to ensure that they can convert over to the digital world; and, at the same time, the taxpayer is going to foot the bill for you to be able to make that transition.

So I think it is important for us to ensure that the consumer, the taxpayer, then gets the benefits of this digital flexibility which we are trying to create. And I think, Mr. Price, you are raising an interesting way of approaching that subject and I think we should probably continue to discuss it along those lines.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you.

Mr. Price, you are our legal expert here, so let me spin a bit with you. The whole context by which must-carry was approved, was sustained, was that Congress could in fact impose a must-carry requirement on the cable systems to carry commercially viable local programming from affiliate stations, because cable was in essence a monopoly delivery system still in the country.

The question I want to ask you is, you know, we are in the business right now of—and the FCC is looking at what the 1996 act means when it comes to cable carriage of digital signals. We are going to be in the business very soon of helping the FCC make that decision, that cable must pass through all these multiple multiplex stations and the HDTV signal and there is a little controversy going on, as you know, with reference to that question.

The second is, do we—and how do we make that apply to satellite distribution, over-the-air terrestrial wireless systems or alternative delivery systems that perhaps we haven't dreamed up yet? Here is the question: When in fact there are these multiple delivery systems in a competitive fashion available to consumers, is it your opinion that must-carry is going to have a difficult time surviving legally, except for that portion which might, say, carry public—or the peg of public and educational and governmental channels?

Mr. PRICE. I think that, in a way, the situation is worse than that, because the Court in looking at the issue wanted to make sure this was a content-neutral requirement, and it suggested that educational television was somehow content biased, that somehow it is worse to prefer noncommercial. My own view is they had it totally the wrong way around, but——

Mr. TAUZIN. But nevertheless that is what they said.

Mr. PRICE. It is your job to provide the basis for that distinction. In other words, since the Court is saying if you are not content neutral, tell us what the interest of the country is in this rule and make sure that there is a sound foundation for doing so.

Mr. TAUZIN. Because they basically said you in government have no business telling carriers of information what their content ought to be, except in the limited circumstances perhaps of obscenity or something. You never define it. But they said, we are going to let you do it in this case because there is a monopoly delivery system and you defined, at least so far, a public interest in making sure that these local stations of local content are available to people who buy this monopoly system of transport.

The question will be for us or for a court, I suppose, at some point, when we have—if we successfully force other delivery systems who are in competition to cable to carry the same things, have we not in effect taken away the legal foundation upon which the must-carry rule was approved?

Mr. PRICE. I am not really totally ready to answer that question. It is an excellent question.

Mr. TAUZIN. Would you think about it and come back to us in writing?

Mr. PRICE. I would be delighted to. I would be glad to supplement my testimony.

Mr. TAUZIN. I am just reaching way out in the future now but it may be the distinction, based upon public and educational and governmental programming, makes some sense at that point when the courts will not allow us to require must-carry of anything else by that time. And it may also emphasize the importance of the local aspects of what public broadcasting does, and there may be some connection between all of this before it is all over with.

So hearing from you on the legal side would be very, very useful, Mr. Price.

Mr. PRICE. Thank you. I would be delighted to.

Mr. TAUZIN. Let me ask for any final comments from any of you. I didn't ask you what you liked least about our bill. Here is your chance to do it. We heard about what you like about it and we thank you for that, but obviously if we are going to have a good bill that everybody can support, if there is a real bad problem with it—you mentioned the time. You mentioned getting a commissioner. You mentioned, Mr. Jablow, considering the differences between radio and television. You had a few good comments in that regard.

Is there anything you really don't like about it at all that you really wish would come out? Other than the fact we are not going to mark it up today.

Mr. COONROD. This is not a specific critique of the bill, but I think as we go forward, it will be very important to look at those reforms the public broadcasters have already put in place to make sure that the bill reinforces those things.

Mr. TAUZIN. Let me counterchallenge you. It would be very useful for you to summarize those for us. If you went around the country, literally, and gave us some ideas about what is happening out there in terms of on-the-ground, if you will, reforms that are occurring, consolidations, co-locations, the kinds of things that will tell us where the public broadcasting industry is moving.

Mr. COONROD. There are a number. We don't have time, but I would be happy to provide that information.

Mr. TAUZIN. It would be really good to have a summary of it, if you could supply that for us.

Anyone else?

Well, then let me thank you very much. Mr. Markey, you are on.

Mr. MARKEY. I would just like one question for the record, if I could ask Mr. Hollar and Mr. Coonrad to provide it for us, and that would be situations where a station is permitting the hearing of a corporate underwriting acknowledgment in violation of the PBS guidelines. And what I would like, if you could, is to provide for the record a lookback over the last 10 years of this particular area, whether or not violations have gone up over the years, but to help our committee to get a profile of what has happened in terms of stations' compliance with PBS guidelines on the commercial advertising question. Can you do that for the record?

Mr. HOLLAR. Well, the specific arc of 10 years, I don't think I am prepared to state today.

Mr. MARKEY. No, I am saying I need it for the record. If you would provide it to us in writing.

Mr. HOLLAR. Absolutely.

I just wanted to say, and this is not in my testimony, but just to underscore this, last year by a vote of over 90 percent of our member stations, we undertook a board-led process to review the underwriting guidelines within public television, and that is ongoing now. It is a long-term, broad-based, board-driven examination of underwriting practices in this system, and that is ongoing and we would be happy to talk to you about that.

Mr. MARKEY. If we could get all that information and the specific details that we are looking for in terms of the history of this, I think it would be very helpful. Thank you.

Mr. TAUZIN. Thank you. Chairman Bliley has asked that I make a part of the record a series of letters and responses between Mr. Paxton and Chairman Bliley and CPB, PBS and NPR with respect to whether the statutory-set salary cap provisions have been exceeded at any time.

Without objection, so ordered.

[The material appears at the end of the hearing.]

Mr. TAUZIN. Let me make a mention—I know, Beth, that you have expressed in your statements and some of you others have mentioned the fact that because we don't have an authorization bill yet, there is some attempt to make some changes on the appropriations side, and I know how important it is to get started on the digital transformation.

But let me make a point that I really want you please to take to heart here. You have got a sympathetic ear at the Appropriations Committee right now, and its subcommittee Chairman. He is a good friend of yours and mine and of the interest of public broadcasting. It may not always be. This committee has a full appreciation of the role of public broadcasting. And this committee has a unique and long-standing commitment to public broadcasting. And it is this committee that I think you are going to find and continue to find that public broadcasting will find the heart and soul of its support in the Congress. Appropriations Committee changes direction very frequently as we go from debt to surplus, et cetera, and as we go from one budget agreement to another. And this committee is rather stable in its approach, and it is a committee that will be pushing the appropriators and everyone else to consider in conscience our obligation to public broadcasters.

I would suggest to you that the Chairman's problem with the appropriators taking over this role even temporarily is a real problem and that, as a consequence, we have a job to do. We have to move our authorization quickly, and I will be urging him to take it up early when we come back.

The other side of that is that relying upon the temporary fix of the appropriations side, without this committee being fully involved, is not only I think, long term, risky but perhaps the Chairman is correct in urging that you be as patient as you can and give us a chance to resolve these very complex set of issues so we can have a long-standing and sound and complete resolution synergistically of all these problems, as Mr. Price has pointed out, in a way that is not only elegant I think in theory, but that in practice might take us really well into the next century.

Again, let me thank you for taking time out to be with us today, the sacrifices you personally made, and for the assistance in moving this thing forward. Please, between now and when we come back, if you have a specific recommendation for Mr. Markey and I on language, get it in, please.

Final comments, anyone? Beth?

Ms. COURTNEY. Mr. Chairman, two things. It is such a pleasure to testify before your committee where you have so much knowledge of technology. I spend a lot of time testifying, and I don't want to denigrate my colleagues in Louisiana, but explaining how satellite transponders—they are not in the State of Louisiana, they are in geosynchronous orbit above the State of Louisiana, so therefore it is not in another State.

Mr. TAUZIN. Louisiana occasionally is in——

Ms. COURTNEY. So it is a pleasure to talk to this committee that has such deep knowledge of this entire industry and really a handle on the technology, and I applaud you and congratulate you. Thank you for also bringing knowledge back into our community.

But specifically I would like to ask you, although I think this committee has all the knowledge and we want the long-term working with you, do you think it is going to be possible to have the small beginning of the HDTV in this fiscal year so we can plan—about $15 million?

Mr. TAUZIN. I was kind of hinting to you, Beth, that I don't think this is going to happen because I think the Chairman makes the argument that until and unless this committee is fully engaged in the reauthorization, that the Appropriations Committee is taking our jurisdiction and taking that away from us, and reliance upon that process may be bad in the long run. May be helpful short term, but very bad in the long run, and I just ask you to consider that.

In that regard, let me offer my personal thanks again to all of you for what you do for the country. And, Beth, I know we just held a major symposium on wetland destruction. We are losing 35 square miles of coastal wetland, this Nation is, along the coast of Louisiana, and thank you for making sure that folks in Louisiana, even in north Louisiana, not close to the coast, fully understand the statewide and national implications of problems like that. I mean, it is in those places that we feel directly the connection with public broadcasting and the work you do, and I want to thank you again personally.

Again, thank you all. We are going to recess, and we will be back as soon as we can get past an election, a new Congress, and we will get right to the business, right out the box, of reauthorizing public broadcasting.

The hearing stands adjourned.
[Whereupon, at 12:16 p.m., the subcommittee was adjourned.]

U.S. House of Representatives
Committee on Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515–6115

January 29, 1998

Mr. Delano Lewis
President
National Public Radio
635 Massachusetts Ave., N.W.
Washington, D.C. 20001-3753

Dear Mr. Lewis:

The Committee on Commerce has oversight responsibility for National Public Radio (NPR), which pursuant to Section 396 of the Communications Act of 1934 (the Act) receives public funding via the Corporation for Public Broadcasting (CPB) for the development of radio programming. Accordingly, the Committee must seek to ensure that NPR complies with Section 396(k)(9) of the Act. This provision prevents CPB from distributing public funds to NPR unless assurances are provided to CPB that NPR is compensating its officers and employees at an annual rate of pay that does not exceed the rate of basic pay for level I of the Executive Schedule.

It has come to our attention, however, that NPR in 1996 may have distributed to at least one of its officers total compensation that substantially exceeded the Section 396 salary cap. Specifically, a December 24, 1997, article in *Communications Daily* reports that NPR in 1996 distributed to one of its officers a substantial "pre-vesting retirement benefit" of $29,048 that, when combined with the officer's base salary, exceeded the Section 396 salary cap. The article also reports that a similarly situated organization, the Public Broadcasting Service (PBS), sought the advice of counsel as to the legality of distributing bonuses to its officers that, when combined with the officer's base salary, exceeded the Section 396 salary cap. In addition, the article reports that PBS chose not to seek the advice of Congress as to the propriety of any bonuses that have the effect of pushing an officer's total compensation beyond the Section 396 salary cap.

This report, if true, raises questions about NPR's compliance with Section 396(k)(9) of the Act, and moreover, could expose NPR to charges that it has circumvented the Section 396 salary cap by distributing to its officers substantial lump-sum payments. The Committee has an obligation to address these questions and any such charges. Accordingly, pursuant to Rules X and XI of the

Mr. Delano Lewis
January 29, 1998
Page 2

U.S. House of Representatives, please provide written answers to the following requests prior to the close of business February 13, 1998.

1. Please list each instance where NPR has distributed, or plans to distribute, to an officer or employee total compensation (which includes, but is not limited to, base salary, bonuses and other supplemental pay) that exceeds the Section 396 salary cap. In doing so, please list the officer's or employee's: (a) name; (b) position; (c) base salary; and (d) any bonus and/or other supplemental pay.

2. What is NPR's view as to the permissibility of distributing total compensation to an officer or employee that exceeds the Section 396 salary cap?

3. Please describe each instance where NPR has sought, or plans to seek, legal advice as to the permissibility of distributing total compensation to an officer or employee that exceeds the Section 396 salary cap. Please indicate who, if anyone, provided or will provide such legal advice. In addition, please summarize the findings of such legal advice.

4. Please describe each instance in which NPR has advanced to CPB a legal claim or argument that NPR may distribute total compensation to an officer or employee that exceeds the Section 396 salary cap. To the extent such a claim or argument was made to CPB in writing, please provide a copy of such legal claim or argument. Please also describe CPB's response to any such claims or arguments.

5. Please describe what assurances NPR provides CPB on an annual basis that NPR's compensation plans are permissible under Section 396.

We look forward to your timely response to these questions.

Sincerely,

Tom Bliley
Chairman
Committee on Commerce

Bill Paxon
Member
Committee on Commerce

cc: The Honorable John D. Dingell
The Honorable W.J. "Billy" Tauzin
The Honorable Edward J. Markey

U.S. House of Representatives
Committee on Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515–6115

January 29, 1998

Mr. Ervin Duggan
President
Public Broadcasting Service
1320 Braddock Place
Alexandria, VA 22314

Dear Mr. Duggan:

The Committee on Commerce has oversight responsibility for the Public Broadcasting Service (PBS), which pursuant to Section 396 of the Communications Act of 1934 (the Act) receives public funding via the Corporation for Public Broadcasting (CPB) for the development of television programming. Accordingly, the Committee must seek to ensure that PBS complies with Section 396(k)(9) of the Act. This provision prevents CPB from distributing public funds to PBS unless assurances are provided to CPB that PBS is compensating its officers and employees at an annual rate of pay that does not exceed the rate of basic pay for level I of the Executive Schedule.

It has come to our attention, however, that PBS in 1996 may have distributed to some of its officers total compensation that substantially exceeded the Section 396 salary cap. Specifically, a December 24, 1997, article in *Communications Daily* reports that PBS in 1996 distributed to its officers substantial bonuses that, when combined with the officers' base salary, exceeded the Section 396 salary cap. The article also reports that PBS sought the advice of counsel as to the legality of such bonuses, but that PBS chose not to seek the advice of Congress as to the propriety of any bonuses that have the effect of pushing an officer's total compensation beyond the Section 396 salary cap.

This report, if true, raises questions about PBS's compliance with Section 396(k)(9). Moreover, given the size of these bonuses, the report could expose PBS to charges that it has circumvented the Section 396 salary cap by distributing substantial bonuses. The report, for example, lists the following bonuses were paid to certain PBS officers: $28,950 (constituting 20 percent of the officer's base salary in 1996); $30,700 (22 percent); $32,410 (25 percent); $25,910 (20 percent); and $23,945 (18.5 percent).

Mr. Ervin Duggan
January 29, 1998
Page 2

The Committee has an obligation to address these questions and any such charges. Accordingly, pursuant to Rules X and XI of the U.S. House of Representatives, please provide written answers to the following requests prior to the close of business February 13, 1998.

1. Please list each instance where PBS has distributed, or plans to distribute, to an officer or employee total compensation (which includes, but is not limited to, base salary, bonuses and other supplemental pay) that exceeds the Section 396 salary cap. In doing so, please list the officer's or employee's: (a) name; (b) position; (c) base salary; and (d) any bonus and/or other supplemental pay.

2. What is PBS's view as to the permissibility of distributing total compensation to an officer or employee that exceeds the Section 396 salary cap?

3. Please describe each instance where PBS has sought, or plans to seek, legal advice as to the permissibility of distributing total compensation to an officer or employee that exceeds the Section 396 salary cap. Please indicate who, if anyone, provided or will provide such legal advice. In addition, please summarize the findings of such legal advice.

4. Please describe each instance in which PBS has advanced to CPB a legal claim or argument that PBS may distribute total compensation to an officer or employee that exceeds the Section 396 salary cap. To the extent such a claim or argument was made to CPB in writing, please provide a copy of such legal claim or argument. Please also describe CPB's response to any such claims or arguments.

5. Please describe what assurances PBS provides CPB on an annual basis that PBS's compensation plans are permissible under Section 396.

We look forward to your timely response to these questions.

Sincerely,

Tom Bliley
Chairman
Committee on Commerce

Bill Paxon
Member
Committee on Commerce

cc: The Honorable John D. Dingell
The Honorable W.J. "Billy" Tauzin
The Honorable Edward J. Markey

U.S. House of Representatives
Committee on Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515–6115

January 29, 1998

Mr. Robert T. Coonrod
President and Chief Executive Officer
Corporation for Public Broadcasting
901 E Street, N.W.
Washington, D.C. 20004-2037

Dear Mr. Coonrod:

The Committee on Commerce has oversight responsibility for the Corporation for Public Broadcasting (CPB), which is a non-profit corporation established pursuant to Section 396 of the Communications Act of 1934 (the Act). The Committee therefore must seek to ensure that CPB complies with Section 396(e)(1) of the Act. This provision prevents CPB from compensating its officers or employees at an annual rate of pay which exceeds the rate of basic pay for level I of the Executive Schedule. The Committee must also seek to ensure that CPB complies with Section 396(k)(9) of the Act. This provision prevents CPB from distributing public funds to the Public Broadcasting Service (PBS) and National Public Radio (NPR) unless assurances are provided to CPB that PBS and NPR are compensating their officers and employees at an annual rate of pay that does not exceed the rate of basic pay for level I of the Executive Schedule.

It has come to our attention, however, that PBS and NPR in 1996 may have distributed to some of their officers total compensation that substantially exceeded the Section 396 salary cap. Specifically, a December 24, 1997, article in *Communications Daily* reports that PBS and NPR in 1996 distributed to their officers and employees substantial bonuses and/or other supplemental pay that, when combined with the officers' or employees' base salary, exceeded the Section 396 salary cap. The article also reports that PBS sought the advice of counsel as to the legality of such bonuses and/or other supplemental pay, but that PBS chose not to seek the advice of Congress as to the propriety of any bonuses and/or other supplemental pay that have the effect of pushing an officer's or employee's total compensation beyond the Section 396 salary cap.

This report, if true, raises questions about CPB's compliance with Section 396 of the Act. Moreover, given the size of these bonuses, the report could expose PBS and NPR to charges that these organizations have circumvented the Section 396 salary cap by distributing large bonuses and/or other supplemental pay to their officers and employees. The report, for example, lists the

Mr. Robert T. Coonrod
January 29, 1998
Page 2

following bonuses as being paid to certain PBS officers: $28,950 (constituting 20 percent of the officer's base salary in 1996); $30,700 (22 percent); $32,410 (25 percent); $25,910 (20 percent); and $23,945 (18.5 percent).

The Committee has an obligation to address these questions and any such charges. Accordingly, pursuant to Rules X and XI of the U.S. House of Representatives, please provide written answers to the following requests prior to the close of business February 13, 1998.

1. Please list each instance where CPB has distributed, or plans to distribute, to an officer or employee total compensation (which includes, but is not limited to, base salary, bonuses and other supplemental pay) that exceeds the Section 396 salary cap. In doing so, please list the officer's or employee's: (a) name; (b) position; (c) base salary; and (d) any bonus and/or other supplemental pay.

2. What is CPB's view as to the permissibility of CPB, PBS or NPR distributing total compensation to its officers or employees that exceeds the Section 396 salary cap?

3. Please describe each instance where CPB has sought, or plans to seek, legal advice as to the permissibility of distributing total compensation to an officer or employee that exceeds the Section 396 salary cap. Please indicate who, if anyone, provided or will provide such legal advice. In addition, please summarize the findings of such legal advice.

4. Please describe each instance in which PBS or NPR has advanced to CPB a legal claim or argument that PBS or NPR may distribute total compensation to an officer or employee that exceeds the Section 396 salary cap. To the extent such a claim or argument was made to CPB in writing, please provide a copy of such legal claim or argument. Please also describe CPB's response to any such claims or arguments.

5. Please describe what assurances CPB receives on annual basis from PBS and NPR that their compensation plans are permissible under Section 396.

6. Please describe each instance where CPB was aware that PBS and NPR had distributed total compensation to an officer or employee that exceeded the Section 396 salary cap.

We look forward to your timely response to these questions.

Sincerely,

Tom Bliley
Chairman
Committee on Commerce

Bill Paxon
Member
Committee on Commerce

cc: The Honorable John D. Dingell
The Honorable W.J. "Billy" Tauzin
The Honorable Edward J. Markey

Office of the President
National Public Radio®
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202.414.2010 Tel
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February 13, 1998

Honorable Thomas J. Bliley
Chairman
Honorable Bill Paxon
Member
Committee on Commerce
U. S. House of Representatives
Room 2125
Rayburn House Office Building
Washington, DC 20515-6115

Gentlemen:

This responds to your letter of January 29th inquiring as to NPR's compliance with the requirements of the so-called "salary cap" as set forth in 47 U.S.C. Section 396(k)(9). I want to lay to rest any concerns which you or any of your colleagues may have regarding this subject.

NPR has to the best of my knowledge complied fully with those requirements. I cannot speak with certainty for the period before approximately 1991, as NPR does not as a general policy retain all of its records beyond about six years. However, for the period since 1994, when I became President of NPR, and based on the records on this subject which we have located, I can answer your questions as follows:

1. Please list each instance where NPR has distributed, or plans to distribute, to an officer or employee total compensation (which includes, but is not limited to, base salary, bonuses and other supplemental pay) that exceeds the Section 396 salary cap. In doing so, please list the officer's or employee's: (a) name; (b) position; (c) base salary; and (d) any bonus and/or other supplemental pay.

ANSWER: NPR believes that we can fully answer the spirit of your question by assuring you that the only instances in which persons at NPR received total compensation, including base salary, bonuses and supplemental pay, in excess of the amount set forth in the salary cap are the following:

a) Bob Edwards, senior host for the program "Morning Edition," receives an hourly wage which on an annualized basis is considerably less than the amount of the salary cap. Because he must begin work at 1:00 a.m. each day, he receives, under the provisions of NPR's collective bargaining agreement with the American Federation of Television and Radio Artists applicable to all covered employees, overnight differentials, overtime payments, meal penalties and other fringe benefits. These payments have, in some cases, pushed his total pay slightly over the amount of the salary cap.

b) There have been two instances where a senior officer, who has joined NPR from a job outside of our organization, received in a single year total payments which exceeded the amount of the salary cap. This happened because the officer received a taxable amount equal to what otherwise would have been contributed to the officer's NPR retirement plan during those first two years. This is similar to the situation of a cabinet-level federal employee whose employer retirement contribution vests from the outset of employment. These two instances involvad NPR's Chief Operating Officer, Peter Jablow, in fiscal year 1995-1996, and myself in fiscal year 1994-1995. Indeed, the reason Mr. Jablow's compensation for the year exceeded the amount set forth in the salary cap was that he was paid the entire pre-vesting retirement benefit for the two-year period at the end of the second year. If it had been paid in each year the amount would probably not have exceeded $148,400 in either year.

c) In 1996 I received an unexpected merit bonus of $30,000, which was paid upon the vote of the Board of Directors as reward for extraordinary service and achievement.

d) In 1990 my pradecessor, Doug Bennet, received an unexpected merit bonus of $50,000 in the form of a split-dollar life insurance policy. This was voted by the NPR Board of Directors in express recognition of his work over the prior six years in restoring NPR to financial health.

I am adding another piece of information, although it does not actually involve a payment to an employee. NPR has provided all of its salaried employees, including its officers, with group term life in an amount equal to two and one-half times their annual salary but not exceeding $200,000. Under the tax code, the portion of those premiums for such insurance in excess of $50,000 is taxable to the employee. That amount has made my taxable income as shown on NPR's Form 990 exceed the amount of the salary cap. This portion of the premiums, however, is not paid to me, though I must pay taxes on it.

2. What is NPR's view as to the permissibility of distributing total compensation to an officer or employee that exceeds the Section 396 salary cap?

ANSWER: We do not think that we can define in the abstract the meaning of the statutory language that would apply in all situations. The plain statutory language must speak for itself. We can say, however, that NPR firmly believes that, in each of the above instances in which its employees have received total payments in any year in an amount greater than the salary cap amount, such payments have been consistent with both the letter and spirit of the salary cap.

3. Please describe each instance in which NPR has sought, or plans to

seek, legal advice as to the permissibility of distributing total compensation to an officer or employee that exceeds the Section 396 salary cap. Please indicate who, if anyone, provided or will provide such legal advice. In addition, please summarize the findings of such legal advice.

ANSWER: We believe that NPR's opinions received from legal counsel are privileged. However, over ten years ago CPB advised us that it considered as correct our interpretation of the law with respect to the circumstance set forth in (1)(a) above. Moreover, I can also say that in the cases of 1(b), (c) and (d) above, counsel have been consulted in each instance and that we would not have made the payments unless we believed that such payments were legally consistent with the constraints of the salary cap.

4. Please describe each instance in which NPR has advanced to CPB a legal claim or argument that NPR may distribute total compensation to an officer or employee that exceeds the Section 396 salary cap. To the extent such a claim or argument was made to CPB in writing, please provide a copy of such legal claim or argument. Please also describe CPB's response to any such claims or arguments.

ANSWER: NPR has regularly received inquiries from CPB whenever the amounts listed in NPR's Form 990 showed payments received in that year by an NPR employee which exceeded the amount of the salary cap. The circumstances described above in answer number 1 describa all of such occasions. In each instance where CPB has inquired, NPR has explained the reason for the apparent discrepancy and CPB has taken no further action.

5. Please describe what assurances NPR provides CPB on an annual basis that NPR's compensation plans are permissible under Section 396.

ANSWER: NPR each year provides the assurance required by CPB on the form provided by CPB.

I trust that this answers your questions.

Cordially,

Delano E. Lewis

Delano E. Lewis
President & CEO

cc: Honorable John D. Dingell
Honorable W. J. "Billy" Tauzin
Honorable Edward J. Markey

CORPORATION FOR PUBLIC BROADCASTING

Robert T. Coonrod
President and Chief Executive Officer

February 13, 1998

The Honorable Thomas J. Bliley, Jr.
Chairman
Committee on Commerce
United States House of Representatives
Rayburn House Office Building
Room 2125
Washington, D.C. 20515-6115

Dear Chairman Bliley:

This letter is in response to your letter dated January 29, 1998, in which you raised various questions regarding the maximum annual rate of pay applicable to the Corporation for Public Broadcasting ("CPB"), the Public Broadcasting Service ("PBS") and National Public Radio ("NPR").

As you reflect in your letter, Section 396(e)(1) of the Communications Act of 1934 (the "Act") provides that "[n]o officer or employee of the Corporation may be compensated by the Corporation at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level 1 of the Executive Schedule under section 5312 of Title 5." In addition, Section 396(k)(9) of the Act provides that funds may not be distributed pursuant to that subsection "unless assurances are provided to the Corporation that no officer or employee of the Public Broadcasting Service or National Public Radio (or any successor organization), as the case may be, will be compensated at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of Title 5."

Your letter refers to a December 24, 1997 article in *Communications Daily* regarding bonuses paid to PBS and NPR officers and employees. In connection therewith, you asked that CPB answer the following questions:

1. Please list each instance where CPB has distributed, or plans to distribute, to an officer or employee total compensation (which includes, but is not limited to, base salary, bonuses and other supplemental pay) that exceeds the Section 396 salary cap. In doing so, please list the officer's or employee's: (a) name; (b) position; (c) base salary; and (d) any bonus and/or other supplemental pay.

901 E Street, NW
Washington, DC 20004-2037
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(202) 783-1020 (Fax)
Internet Mail: rcoonrod@cpb.org

The Honorable Thomas J. Bliley, Jr.
February 13, 1998
Page Two

Answer: According to Section 396(e)(1) of the Act, CPB is prohibited from compensating its officers or employees at an annual rate of pay which exceeds the rate of basic pay for level I of the Executive Schedule. In no instance has CPB supplemented the annual rate of pay of CPB executives, officers or employees such as through bonuses or other supplemental pay that would violate the Section 396(e)(1) salary cap.

2. What is CPB's view as to the permissibility of CPB, PBS or NPR distributing total compensation to its officers or employees that exceeds the Section 396 salary cap?

Answer: CPB believes that the statutory provisions set forth at Section 396(e)(1) and Section 396(k)(9) of the Act restrict the base salary which an officer or employee of CPB, PBS or NPR might receive in a given year. The statute does not specifically address supplemental forms of compensation such as bonuses. For the reasons set forth in the attached materials, CPB also believes that bonuses are not prohibited by the Act, so long as they are unexpected, unusual or extraordinary, even if they otherwise exceed the Section 396 salary caps.

3. Please describe each instance where CPB has sought, or plans to seek, legal advice as to the permissibility of distributing total compensation to an officer or employee that exceeds the Section 396 salary cap. Please indicate who, if anyone, provided or will provide such legal advice. In addition, please summarize the findings of such legal advice.

Answer: CPB has relied on opinions of its in-house counsel to interpret the statutory salary cap provisions. In addition to opinions that have been verbally sought and provided on many occasions, CPB has identified two written memoranda prepared by in-house counsel that provide interpretations of the statute. One memorandum is dated January 6, 1988, and the other memorandum is dated February 18, 1994. CPB also has in its possession a legal opinion dated, April 21, 1980, from an outside law firm addressed to an Associate General Counsel of PBS. While this outside law firm's legal opinion was not provided directly from the firm to CPB, CPB has been persuaded by its analysis and has relied on it from time to time. We have attached hereto a copy of this legal opinion.

CPB's internal communications with counsel are protected, confidential communications. CPB believes that it would be improper to disclose such confidential communications, but in order to provide you with a description of the nature of the documents, the following summary is provided. One of the

The Honorable Thomas J. Bliley, Jr.
February 13, 1998
Page Three

two memoranda supports the position that supplemental pay such as a bonus does not violate the salary cap as long as the bonus is neither expected, nor routine, but rather reflects an unusual, unexpected or extraordinary payment. The other memorandum is exploratory in nature and merely sets forth the issues involved.

4. Please describe each instance in which PBS or NPR has advanced to CPB a legal claim or argument that PBS or NPR may distribute total compensation to an officer or employee that exceeds the Section 396 salary cap. To the extent such a claim or argument was made to CPB in writing, please provide a copy of such legal claim or argument. Please also describe CPB's response to any such claims or arguments.

Answer: Although PBS and NPR have supported their positions verbally on many occasions, both have also provided to CPB written legal claims or arguments on this issue. PBS has set forth its position in the following letters: (a) January 30, 1984 letter from Lawrence A. Horn, PBS Senior Vice President and General Counsel, to Linda C. Dorian, CPB Vice President, General Counsel and Secretary; (b) December 14, 1987 letter from Alfred R. Stern, PBS Chairman of the Board of Directors, to Donald E. Ledwig, CPB President and Chief Executive Officer; and (c) June 21, 1989 letter from Paula A. Jameson, PBS Senior Vice President, General Counsel and Secretary, to Paul E. Symczak, CPB Vice President, General Counsel and Secretary. NPR has set forth its position in a December 14, 1987 letter from Douglas J. Bennet, NPR President, to Donald E. Ledwig, CPB President and Chief Executive Officer. In 1996, CPB engaged in several telephone calls with both PBS and NPR in which each defended their most recent incidents of supplemental pay to CPB's satisfaction. We have attached hereto a copy of each of the referenced written communications from PBS and NPR. CPB's responses to the Stern letter and to the Bennet letter, as well as CPB inquiries that triggered the PBS and NPR letters, are also attached hereto.

5. Please describe what assurances CPB receives on an annual basis from PBS and NPR that their compensation plans are permissible under Section 396.

Answer: CPB requires PBS and NPR to provide an annual statement certifying that each organization, as of the date of the certification, is in compliance with Section 396(k)(9) of the Act. CPB also reviews the federal income tax filings of each of these organizations for indications of salary cap violations.

6. Please describe each instance where CPB was aware that PBS and NPR had distributed total compensation to an officer or employee that exceeded the Section 396 salary cap.

The Honorable Thomas J. Bliley, Jr.
February 13, 1998
Page Four

Answer: Since implementation of the salary cap, CPB believes that PBS and NPR have distributed total compensation exceeding the Section 396 salary cap in the following instances: (a) 1982: one PBS officer; (b) 1986: PBS President; (c) 1986: one NPR employee; (d) 1989: PBS President; (e) 1994: one NPR employee; (f) 1995: one NPR employee; (g) 1996: six PBS employees; and (h) 1996: two NPR employees. In addition, CPB has recently learned that PBS Enterprises has paid an employee several bonuses. These bonuses had not previously been reported to CPB because they are not subject to the salary cap. In one year, this PBS Enterprises employee may have received a small percentage of his salary from PBS itself. However, the amount of compensation paid by PBS did not approach the salary cap. In addition, CPB has also recently learned that in 1990 NPR provided a life insurance benefit to its President that did not constitute a cash bonus. CPB has also recently been informed that for FY 1997, PBS has provided bonuses to four employees that, when combined with the recipients' base pay, will exceed the Section 396 salary cap. We were also just informed that for FY 1997 NPR has provided supplemental compensation to one employee, that, when combined with the recipient's base pay, will exceed the Section 396 salary cap.

When questions arise about supplement payments, CPB seeks further assurances from both NPR and PBS that such payments do not violate the statutory salary cap. It is also important to note that instances of supplemental pay exceeding the salary cap when combined with base salary are relatively rare. In the last 19 years, assuming that PBS, NPR and CPB employ a total of 32 officers (the combined 1997 total), 97% of all officer salaries were below the salary cap, even when any supplemental compensation is added to their base salary. Moreover, in no year does the average salary of officers of CPB, PBS or NPR even approach the salary cap. CPB believes that this is directly attributable to responsible compliance with the salary cap by CPB, PBS and NPR.

Thank you for the opportunity to provide you with CPB's views on these matters.

Sincerely,

Robert T. Coonrod
President & Chief Executive Officer

Enclosure

CORPORATION
FOR PUBLIC
BROADCASTING

PBS

March 12, 1998

Justin Lilley, Esq.
Telecommunications Counsel
Committee on Commerce
U.S. House of Representatives
316 Ford House Office Bldg.
Washington, DC 20515

Mark Paoletta, Esq.
General Counsel for Oversight and
Investigations
Committee on Commerce
Room 2125 Rayburn House Office Bldg.
Washington, DC 20515

Dear Justin and Mark:

At our meeting on March 3, 1998, you requested certain additional information from the Public Broadcasting Service to supplement our response to Chairman Bliley and Representative Paxon of February 13, 1998 (the "February 13 letter," a further copy of which is attached for your convenience).

First, the Committee requested confirmation that PBS communicated with CPB concerning the 1996 bonus payments described in the February 13 letter. This will confirm that Mr. Robert G. Ottenhoff, Chief Operating Officer of PBS, notified Mr. Robert T. Coonrod, then Chief Operating Officer of the Corporation for Public Broadcasting, of such bonuses in one or more telephone conversations. This will further confirm that there was no additional written inquiry from CPB regarding such bonuses.

Second, the Committee asked for further information concerning the 1996 and 1997 bonuses, and, in particular, whether the granting of such bonuses in consecutive years constituted a new pattern. As Ms. Elizabeth Wolfe, Chief Financial Officer of PBS, discussed in detail at our meeting, the 1996 and 1997 bonuses are not part of an ongoing pattern or plan, but were awarded in each case as a result of the extraordinary achievements of each individual in that particular year. Attached as requested by Chris Knauer is a summary of those achievements with respect to each individual who received a bonus in 1996 or 1997. This information should be reviewed in connection with the February 13

Public Broadcasting Service
1320 Braddock Place Alexandria, VA 22314-1698 (703)739-5000

letter, which provides a broader context. In particular, it is PBS's view that the events of 1996 and 1997 constituted watershed years for PBS and the culmination of major strategic changes instituted by Mr. Duggan, all as further described in the PBS Annual Report for 1997 furnished to you at our meeting and as further described in the Bliley letter.

Finally, you inquired about past severance payments to PBS employees. As we stated at the meeting, PBS views severance payments as presenting a different issue than the issue of whether any PBS employees exceeded the Section 396(k) salary cap. Severance payments are by definition one-time, unexpected, and unusual payments and as such do not constitute part of any individual employee's basic rate of pay. Severance payments are made in a variety of circumstances, and often constitute settlement of any possible legal claims. In addition, severance arrangements are sometimes highly sensitive from the standpoint of personal privacy and as a result they are often subject to confidentiality agreements. We would be happy to discuss an arrangement by which we would disclose this further information to you that is respectful of these concerns.

I hope this information resolves any remaining concerns. If you have any further questions please give me a call or contact Rod DeArment or Gerry Waldron at Covington & Burling at (202) 662-6000.

Thank you for your consideration.

Sincerely yours,

Gregory Ferenbach

Gregory Ferenbach
Vice President and Acting
General Counsel

Enclosures

cc: Chris Knauer, Investigator
Colin G. Campbell, Chair,
PBS Board of Directors
Milton P. Wilkins, Chair
Compensation Subcommittee

Supplemental Information to Letter to Chairman Bliley and Representative Paxon dated February 13, 1998

The Committee has asked for further clarification about the circumstances under which bonuses were paid to certain PBS executives in 1996 and 1997. Fiscal years 1996 and 1997 were both extraordinary years for PBS. In financial terms, they were unmatched by any in PBS history. Revenue growth in 1996 of $13 million equaled the total growth achieved for FY 1992 through FY 1995 combined. Then, in FY 1997, revenue grew by another $47 million:

PBS Budget Increases

FY 1992	$174 million
FY 1993	$175 million
FY 1994	$182 million
FY 1995	$187 million
FY 1996	$200 million
FY 1997	$247 million

Extraordinary Bonuses in 1996

In 1996, under the leadership of Ervin Duggan, PBS fully committed itself to a plan of growth. This entailed the development of a new strategic plan to leverage PBS's assets of content, distribution, brand recognition and economies of scale (the "Station Equity Model"). The plan also required PBS to change many of its business practices and to re-negotiate production agreements with its producers, many of which are also member stations. These changes are discussed in more detail in the letter from Colin Campbell and Milton Wilkins to Chairman Bliley and Representative Paxon dated February 13, 1998. The following executives were awarded bonuses for 1996, all as further described in the attachments to that letter:

Ervin Duggan: Mr. Duggan, President and CEO, provided the vision for the new growth strategy. FY 1996 financial results included growth in revenue of $13 million and a surplus of $4.7 million that was then designated by the PBS Board to support the Station Equity Model.

Peter Downey: Mr. Downey, Senior Vice President, Business Affairs, led initiatives to change PBS business practices by steering a Board level Program Task Force, re-visiting underwriting policies and leading sensitive negotiations with PBS producers.

John Hollar: Mr. Hollar, Executive Vice President, Learning Ventures, successfully initiated the Readers' Digest alliance under which Readers Digest committed up to $15 million annually for new programming for five years. This joint venture was one of the first strategic alliances anticipated by the Station Equity Model. John was also responsible for PBS ONLINE® which was launched in FY 1996 to wide critical acclaim.

Robert Ottenhoff: Mr. Ottenhoff, in his capacity as Chief Operating Officer, was a key leader in development of the Station Equity Model and the related four year National Program Service growth plan. Mr. Ottenhoff also led the initiative to provide new DBS services to four satellite carriers in late FY 1996 (DirectTV, AlphaStar, EchoStar and PrimeStar).

Eric Sass: Mr. Sass, Senior Vice President, PBS Learning Media, successfully launched the PBS home video catalog, which quickly surpassed its projections and became profitable in one year. The catalog is now generating over $2 million in net income, and this revenue is used to fund more national programming.

Elizabeth Wolfe: Ms. Wolfe, Chief Financial Officer, co-chaired a cross-departmental team that did research, analysis and business planning for the Station Equity Model. New investment strategies initiated by her in 1996 also resulted in increased investment income to PBS of $1 million in FY 1996.

Extraordinary Bonuses in 1997

In 1997, PBS lost its most valuable tangible asset- the satellite transponders constituting the public television interconnection system - valued at over $77 million. Faced with the prospect of extraordinary financial losses, under Mr. Duggan's leadership, PBS "stayed the course" and again achieved unprecedented success.

Ervin Duggan: Mr. Duggan was awarded a further bonus for extraordinary results in 1997 under the new strategic plan while at the same time overcoming the satellite disaster. In FY 1997, revenue increased by $47 million, PBS's investment in the NPS was increased by 16%, and the revenue-generating areas of PBS generated $11 million in net income, as compared to $2.5 million in 1996.

John Hollar: Mr. Hollar launched The Business Channel®, a joint venture with a Fortune 500 company, which provided $7.5 million in new revenue directly to PBS in FY 1997.

Kathy Quattrone: Ms. Quattrone completed an extraordinary first year as Chief Program Executive of PBS, after the position was vacant for 18 months. The National Program Service had an exceptional year, with an unusual number of awards and an increase in audience ratings at time when most broadcasters were experiencing decreases.

Robert Ottenhoff: As Chief Operating Officer, Mr. Ottenhoff was responsible for managing the satellite disaster recovery and transition team.

PBS

Colin G. Campbell
Chairman of the Board

February 13, 1998

The Honorable Tom Bliley
The Honorable Bill Paxon
U.S. House of Representatives
Committee on Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Bliley and Rep. Paxon:

On January 29 you requested information regarding employee compensation from Ervin S. Duggan, President of the Public Broadcasting Service ("PBS"). Since the Compensation Committee of the PBS Board of Directors is responsible for establishing the compensation of Mr. Duggan and other senior PBS executives, we are happy to respond to your inquiry.

The PBS Board of Directors has a fiduciary obligation, on behalf of this private, nonprofit corporation, to ensure that PBS is able to recruit and reward skilled professionals. At the same time, we are responsible for ensuring that this corporation complies with all relevant legal obligations. We want to assure you and the other members of the Committee that this Board is diligent and dutiful in its efforts to abide by applicable law.

As you note in your letter, Section 396(k) of the Communications Act provides that a PBS employee's "annual rate of pay" cannot exceed the "rate of basic pay" for an Executive Level I Federal employee. The compensation policies of PBS are consistent with this provision, since annual salary rates are at or below Level I. The Board has consistently been advised by outside counsel that the payment of bonuses by PBS for exceptional achievements is not restricted by Section 396(k) so long as such payments constitute genuine bonuses — that is, so long as they represent non-regular, extraordinary and unexpected payments based, for example, on a specific determination of exceptionally meritorious service.

Public Broadcasting Service
1320 Braddock Place Alexandria, VA 22314-1698 (703)739-5000

The Honorable Tom Bliley
The Honorable Bill Paxon
February 13, 1998
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Accordingly, the PBS Board of Directors has from time to time used bonuses as a means of rewarding exceptional performance. The payment of these bonuses is fully disclosed in the attached materials and we have attached full and complete answers to all of your questions. In addition, this letter is intended to provide further background that may be useful to the Committee.

As you may know, in recent years congressional support for PBS and public television has declined from a high of more than 30 percent of total support to less than 15 percent. The Congress of the United States, moreover, has repeatedly encouraged public broadcasters to seek new revenue sources through entrepreneurial activities. While federal funding remains vital to public broadcasting, the executives of PBS undertook extraordinary efforts in 1996 and 1997 and achieved exceptional progress toward strengthening PBS's financial position.

Let us cite several examples of these efforts in 1996 and 1997. The Board considered each of these achievements extraordinary, and awarded bonuses to the leaders responsible.

- In 1996 PBS management implemented a new strategic plan designed to maximize entrepreneurial efforts and bring increased resources to the backbone of our enterprise, the National Program Service. This plan, called the "Station Equity Model," included aggressive goals to achieve a 50% increase in the programming budget over four years following three years of flat funding. As a result, PBS's operating revenues at the end of fiscal 1997 had grown by almost $47 million over fiscal 1996 and $60 million over fiscal 1995, a 32% increase over two years. PBS's dramatically improved financial performance was a direct result of these new entrepreneurial initiatives and is unprecedented in the history of PBS.

- In 1996 PBS management began to revolutionize its business practices with regard to the acquisition of program rights. For most of its history, PBS was basically a grant-making institution; now, to ensure that public television garners an appropriate return for its investment in programs, PBS negotiates much more demanding revenue-sharing arrangements than in the past. An example of these efforts is *Arthur*, one of the country's most popular children's programs. Effecting this fundamental change has been a controversial and daunting challenge, but the Board believes strongly that

The Honorable Tom Bliley
The Honorable Bill Paxon
February 13, 1998
Page 3

PBS management is succeeding impressively in striking the proper balance between being frugal stewards of public resources and obtaining a fair return on investments.

- The 1996 launch of PBS ONLINE, one of the most popular, respected and valued sites on the Worldwide Web has been, in the Board's judgment, another extraordinary strategic achievement. PBS ONLINE has been a strong magnet attracting important partnerships with the country's leading technology companies, including Intel, Netscape, Microsoft's WebTV, WavePhore and Harris Corporation. PBS ONLINE has won numerous awards and was ranked as one of the three best educational sites on the Internet (with NASA and *National Geographic*) by Dun and Bradstreet's respected MDR research division.

- In 1997, as part of the Station Equity Model, PBS aggressively sought innovative alliances with the private, for-profit sector. Striking the right balance of public service and private gain in these transactions was an enormous challenge for management, yet PBS succeeded in forging creative strategic alliances with some of the country's most respected media corporations, including Turner Home Entertainment (now Warner HomeVideo), The Walt Disney Company's Buena Vista Television, The Reader's Digest Association, The Williams Companies, United Media Licensing, and Warner Bros. Records. These new alliances have enabled PBS to develop and grow a major home video marketing business (which now earns millions of dollars in net revenue each year), launch an innovative business education and workplace training service (PBS The Business Channel), a product licensing initiative, new program production and syndication activities, and a record label (PBS Records).

- PBS's future is directly tied to its programming vision and the successful execution of that vision. Our national programming enjoyed extraordinary successes in 1997 during which PBS introduced new and innovative programs. Among those programs were Ken Burns's *Thomas Jefferson*, *TR*, *The Living Edens* and *Arthur*. These and many other programs that aired last year garnered extraordinary critical acclaim and an unusual number of awards. PBS won more Peabody awards and children's daytime Emmy awards, for example than all other broadcast networks combined. PBS developed a new children's programming initiative, which has resulted in

PBS programs being ranked 1-2-3 among preschoolers, as well as the launch of widely praised programs for older children such as *Wishbone* and *Kratts' Creatures*. PBS and its member stations also witnessed substantial growth in public television's audiences at a time when other broadcasters experienced significant declines in their audiences.

- Finally, one of PBS management's recent unprecedented accomplishments was the extraordinary recovery from an abrupt and total collapse in January 1997 of the Telstar 401 satellite. Telstar 401 housed PBS's seven federally-funded transponders, the distribution system for the entire PBS network. The implementation — within less than 25 minutes — of PBS's Satellite Service Recovery Plan ensured the uninterrupted flow of essential programming to PBS member stations. PBS was then able to re-acquire the equivalent satellite capabilities *at a lower total replacement cost to PBS than existed before the disaster.* To the great credit of PBS, the public was unaware of an event that could have seriously disrupted all service and destroyed PBS's limited financial reserves.

The PBS Board of Directors includes many current and former chief executives of major American corporations, as well as experienced leaders from the nonprofit sector and American political life. (A list of the Board of Directors and their affiliations is attached.) As we have indicated to you in visits and other discussions, our Board is unanimous in its judgment that — given the reduced involvement of Congress in funding public television on a percentage basis, and the entrepreneurial mandate suggested to PBS by Congress — the salary cap constitutes an unwarranted and obsolete handicap on the ability of PBS to attract and reward key executives and to progress in its new direction. While the cap exists, however, we will continue to abide by it and to make full disclosure of any occasional bonuses paid for extraordinary performance. Our Directors also agree that, despite the salary cap's unusual restriction upon our ability to recruit and reward talented executives, PBS's management team has recently been successful beyond any reasonable expectations in bringing new energy, resources, practices and alliances to PBS's unique nonprofit, public-service mission of education, culture and citizenship. And they have performed this feat amidst enormous financial, creative, technical and competitive challenges.

The Honorable Tom Bliley
The Honorable Bill Paxon
February 13, 1998
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We are confident that this letter and the attached information will attest that PBS appropriately compensates its employees and that its actions are fully in keeping with existing law and with the intent of Congress in 1979.

Sincerely,

Colin G. Campbell

Colin G. Campbell
Chairman of the Board

Milton P. Wilkins, Jr.
Chair, Compensation Committee

Attachments

cc: The Honorable John D. Dingell
The Honorable W.J. "Billy" Tauzin
The Honorable Edward J. Markey

PBS Responses to January 29, 1998 Letter from Chairman Bliley and Representative Paxon

Question 1: Please list each instance where PBS has distributed, or plans to distribute, to an officer or employee total compensation (which includes, but is not limited to, base salary, bonuses and other supplemental pay) that exceeds the Section 396 salary cap. In doing so, please list the officer's or employee's: (a) name; (b) position; (c) base salary; and (d) any bonus and/or other supplemental pay.

Answer: See attached chart of PBS bonus history.

Question 2: What is PBS's view as to the permissibility of distributing total compensation to an officer or employee that exceeds the Section 396 salary cap?

Answer: The Section 396 (k) salary cap provides that a PBS employee's "annual rate of pay" cannot exceed the "rate of basic pay" for an Executive Level I Federal employee. The payment of bonuses by PBS to its officers and employees is not restricted by Section 396 (k) so long as such payments constitute genuine bonuses — that is, so long as they represent nonregular, extraordinary and unexpected payments based, for example, on a determination of particularly meritorious service.

Question 3: Please describe each instance where PBS has sought, or plans to seek, legal advice as to the permissibility of distributing total compensation to an officer or employee that exceeds the Section 396 salary cap. Please indicate who, if anyone, provided or will provide such legal advice. In addition, please summarize the findings of such legal advice.

Answer: PBS has generally sought legal advice on the Section 396 (k) salary cap when it has considered the payment of bonuses to senior officers and employees. The subject and the applicable legislative history have also been thoroughly reviewed by various counsel on a number of occasions. Without waiving our right to the attorney-client privilege, we have outlined below the instances in which PBS obtained written legal advice on Section 396 (k) from outside counsel, and have provided a summary of that advice:

Date of Legal Advice	From Attorney/Law Firm	Summary of Advice on Section 396 (k)
April 21, 1980	James W. Jones Arnold & Porter	consistent with answer 2 above
May 15, 1982	James W. Jones Arnold & Porter	consistent with answer 2 above
July 2, 1985	Norman Sinel Arnold & Porter	consistent with answer 2 above
November 19, 1986	Norman Sinel Arnold & Porter	consistent with answer 2 above
October 16, 1987	Norman Sinel Arnold & Porter	consistent with answer 2 above
July 19, 1996	Amy Moore Covington & Burling	consistent with answer 2 above
August 8, 1997	Amy Moore Covington & Burling	consistent with answer 2 above
January 14, 1998	Amy Moore Covington & Burling	consistent with answer 2 above

Question 4: Please describe each instance in which PBS has advanced to CPB a legal claim or argument that PBS may distribute total compensation to an officer or employee that exceeds the Section 396 salary cap. To the extend such a claim or argument was made to CPB in writing, please provide a copy of such legal claim or argument. Please also describe CPB's response to any such claims or arguments.

Answer: PBS responded to inquiries from CPB regarding Section 396 on three occasions: January 30, 1984; December 14, 1987; and June 21, 1989. CPB responded only to PBS's December 14, 1987 letter and indicated in its response dated January 27, 1988, that PBS's explanation was not inconsistent with the law. Copies of these four letters are attached.

Question 5: Please describe what assurances PBS provides CPB on an annual basis that PBS's compensation plans are permissible under Section 396.

Answer: PBS provides to CPB, on the form provided by CPB, an annual certification that the company is in compliance with Section 396(k) of the Communications Act of 1934.

PBS Bonus History
1979 to Present

Year	Name	Position	Base Salary	Bonus or Other Supplemental Pay*	Executive Level I Salary
1979				None	
1980				None	
1981				None	
1982	Larry Grossman	President, CEO	$69,630	$10,000	$69,630
1983	Neil Mahrer	Senior VP	$69,000	$5,500	$69,630
1984				None	
1985				None	
1986	Bruce Christensen	President, CEO	$86,200	$30,000	$86,200
	Neil Mahrer	CEO, PBS Enterprises	$84,200	$10,000	$86,200
1987				None	
1988				None	
1989	Bruce Christensen	President, CEO	$99,500	$20,000	$99,500
1989	Neil Mahrer	CEO, PBS Enterprises; COO, PBS	$98,000	$18,500	$99,500
1990				None	
1991				None	

Year	Name	Position	Base Salary	Bonus or Other Supplemental Pay*	Executive Level I Salary
1992				None	
1993				None	
1994				None	
1995				None	
1996	Peter Downey	Senior VP	$129,400	$25,910**	$148,400
	Ervin Duggan	President, CEO	$148,400	$45,000**	$148,400
	John Hollar	Executive VP	$138,000	$30,700**	$148,400
	Robert Ottenhoff	Executive VP, COO	$143,000	$28,950**	$148,400
	Eric Sass	Senior VP	$129,400	$32,410**	$148,400
	Elizabeth Wolfe	Senior VP, CFO, Treasurer	$126,300	$23,945	$148,400
1997	Ervin Duggan	President, CEO	$148,400	$37,000	$148,400
	John Hollar	Executive VP	$141,977	$24,000	$148,400
	Kathy Quattrone	Executive VP	$135,417	$24,000	$148,400
	Robert Ottenhoff	Executive VP, COO	$147,300	$24,500	$148,400

* Does not include payments for retirement, health care, life insurance, severance, or other employee benefits.

** Total bonus comprised of two payments, as follows:
Downey $4,000 and $21,910
Duggan $20,000 and $25,000.
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PBS

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representing KQED San Francisco

Milton P. Wilkins, Jr.
Vice President and Principal
Roman, Butler, Fullerton and Company
St. Louis, Missouri
representing KETC St. Louis

Jan ry 30, 1984

Linda C. Dorian
Vice President
General Counsel and Secretary
Corporation for Public
Broadcasting
1111 Sixteenth Street, N.W.
Washington, D.C. 20036

Dear Linda:

You have asked me to advise you of the legal basis for PBS's decision (a) to make cash bonus awards to certain PBS officers in amounts, which, if they had been part of those officers' regular compensation, would have caused the rate of pay which such officers would normally receive to exceed the salary cap imposed on officers or employees of PBS under Section 396(k)(10) of the Communications Act, as amended, and (b) to offer a no-interest secured loan to enable PBS's President to purchase a house in the Washington, D.C. area. You and I have discussed these matters on earlier occasions, and I am pleased to have this opportunity to provide you with additional information.

Before responding directly to your questions, a few preliminary remarks are in order. The questions you pose assume the validity of the salary cap imposed on officers and employees of PBS under Section 396(k)(10) of the Communications Act, as amended, and we shall answer on that basis. It should be understood, however, that PBS does not accept that assumption. Prior to its recent amendment and at the time the bonuses and the loan were made, Section 396(k)(10) provided as follows:

> "Funds may not be distributed pursuant to this subsection to the Public Broadcasting Service or National Public Radio (or any successor organization) unless assurances are provided to the Corporation [for Public Broadcasting] that no officer or employee of the Public Broadcasting Service or National Public Radio (or any successor organization), as the case may be, will be compensated at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of Title 5."

This provision has l been opposed by CPB and PBS on the grounds that it is inequitabl inappropriate, impractical, unfair and illegal. In this co ction, the attached legislative history and in particular the remark of CPB Chairman W. Allen Wallis will provide some background.

The salary cap places PBS at a serious disadvantage in attracting the best executive talent in a highly competitive marketplace. Not only is PBS at a disadvantage with other private companies but with the Federal Government as well; for, while the salary cap limits the pay scale of PBS officers and employees to that of Executive Level I officials, the exceptional benefits given to Federal employees in the form of pensions, workers' compensation and other benefits cannot be made available to PBS employees. Indeed, compensation incentives are in the public interest because attracting skilled individuals helps assure the most cost beneficial use of CPB funds to achieve Congressional purposes. The premium on management skills in a nonprofit corporation is even greater than in other corporations because the margin for error is less, yet the fiduciary and other legal responsibilities and duties are identical.

Thus, as an equitable matter, any comparison between the salaries for executive branch officers and public broadcasting officials is seriously flawed when one considers the total compensation and benefits package available to Executive Level I officials. In addition, from a business perspective, PBS, like all other private corporations, is governed, according to law, by a Board of Directors which is solely and ultimately responsible for its actions. As such, the Board is uniquely positioned and qualified to determine appropriate levels of compensation and is authorized to take all other actions on the corporation's behalf. That responsibility cannot be shared with, delegated to or usurped by an outside body such as Congress. In general, it is as inappropriate for Congress to fix the salaries of PBS officers and employees as it is for Congress to fix the salaries of university presidents, executives of defense contractors, symphony orchestra conductors, or other private recipients of limited federal support.

As a legal matter, PBS is not federally-chartered nor was it created under any federal law. Rather, PBS is a private corporation which is simply a recipient of CPB funds not unlike any other private entity which receives directly or indirectly federal support of one form or another; and CPB support represents only a very small percentage (less than 3%) of PBS's fiscal year 1984 budget at that.1/ Moreover, the nature of PBS's business makes Congress' intrusion into its corporate responsibilities and discretion of significant

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1/ By its terms, the salary cap would not apply to PBS at all if it received no grant funds from CPB. As it is, the cap is overbroad, purporting to control the use of monies well beyond those which CPB provides.

Constitutional concern. PBS is responsible for the selection, scheduling and distribution of programming to be made available to broadcast licensees. For Congress to enter into the day-to-day business decisions of broadcasters, and to create a lever which could be used as an expression of dissatisfaction with programming to reduce the stature and impede the hiring power of public broadcasting is inconsistent with the First Amendment. Any organization under such a direct Congressional restriction may feel constrained to avoid programming or other actions that might result in such further reductions. In the absence of some clearly articulated and substantial governmental interest, broadcasters may not be discriminated against in this fashion.

Nevertheless, PBS's view that the salary restriction is inappropriate and illegal had nothing at all to do with its decision to make the cash bonus awards and offer the no-interest loan. PBS has made every effort to assure that compensation to its officers and employees remains within these limitations, and in fact the compensation and benefits actually provided have not violated them. PBS has concluded, however, that these limitations, assuming they are even valid, do not preclude additional compensation to the extent it is the result of (a) certain nonregular, extraordinary and unexpected payments based, for example, on a determination of particularly meritorious service or (b) other forms of compensation which are not considered "ordinary" income, such as medical benefits, annuities, certain other types of deferred compensation, certain levels of life insurance and other fringe benefits.

The particular compensation or benefits about which you have inquired are specifically cash bonuses to certain employees and a no-interest loan to the PBS President for the purpose of helping him purchase a house. Following is an explanation of the relevant legal and other background information underlying those actions.

(a) <u>Bonuses</u>. The statutory provision does not limit the <u>total</u> compensation which an officer or employee of PBS or NPR might receive in a given year but rather restricts only the ordinary compensation which such an officer or employee can receive.3/ Accordingly, the restriction would not apply to bonuses or other payments which are not

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3/ That is not to say an argument cannot be made that Congress intended to limit the total compensation which a PBS or NPR office employ[illegible] can receive; however, the ar[illegible]ment for that proposition not a [illegible]rsuasive one and in any event[illegible] such a limitation would be difficult, if not impossible, to measure.

Linda C. Dorian, ~uire
January 30, 1984
Page 4

usual or expected and are in excess of salary payments which the officer or employee would normally receive. This conclusion is based on the following:

First, such an interpretation best comports with the language of the statute itself. Whatever else may be inferred from the legislative history, the language of the statute is quite precise. It states that no officer or employee of PBS or NPR may be compensated "at an annual rate of pay" in excess of "the rate of basic pay" set in Executive Schedule Level I. From its use of the term "annual rate of pay," it may be fairly inferred that Congress meant something other than "total annual compensation," for, had the latter been intended, more expansive language could easily have been used. In common parlance (and, indeed, in statutory usage as described in more detail below), the term "annual rate of pay" connotes a fixed scheme of compensation which an employee may legitimately expect to receive and with respect to which he has certain legal claims. An unexpected and extraordinary bonus payment is not included in an employee's "annual rate of pay" --at least as the term is commonly used.

Indeed, the legislative history of Section 396(k)(10) in part suggests the correctness of this interpretation. In reporting the conference version of the 1978 Act to the House, Representative Van Deerlin observed that the bill limited "the salaries of officers of CPB, PBS and NPR . . . ." 123 Cong. Rec. 13280 (daily ed. Oct. 13, 1978) (emphasis added). Although the word "salaries" might be an accurate synonym for the term "annual rate of pay," it is not normally used to refer to bonuses and other extraordinary payments to employees.

Second, various statutes dealing with the compensation of public employees demonstrate that when Congress uses the term "rate of pay" or "pay rates," it does not mean to include bonus payments. Rather, Congress uses these terms to refer to the ordinary compensation to which an employee is entitled.

For example, 5 U.S.C. § 5303(a) provides as follows:

> When the President finds that the pay rates in private enterprise from one or more occupations in one or more areas or locations are so substantially above the pay rates of statutory pay schedules as to handicap significantly the Government's recruitment or retention of well-qualified individuals . . . he may establish for the areas or locations higher minimum rates of basic pay for one or

> more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all step rates of the pay range for each such group or level. [Emphasis added.]

In using the term "pay rates," Congress was referring to those rates set forth in the statutory pay schedules which set the rate of basic pay to which an employee is entitled.

Similarly, 5 U.S.C. § 5305 empowers the President to direct such agent as he considers appropriate to prepare a report that "compares the rate of pay of the statutory pay system with the rates of pay for the same levels of work in private enterprise . . . ," and "makes recommendations for appropriate adjustments in rates of pay. . . ." (Emphasis added.) That section further provides that, after considering this report, the President may "adjust the rates of pay of each statutory pay system . . . ." (Emphasis added.) The pay rates thus subject to adjustment are the statutory rates of basic pay.3/ The government bonus system exists separate and apart from -- and is awarded in addition to -- the statutorily prescribed system of basic pay.

Thus, when Congress uses the term "rate of pay" or "pay rates," it refers only to the basic pay received by government employees. Therefore, in placing a ceiling on the "rate of pay" for PBS officers and employees, we believe Congress intended to limit only the amount of basic pay such officers and employees would receive and did not preclude the payment of a bonus for exceptional service.4/

And third, as generally interpreted by the courts, the term "bonus" refers to an additional or extra payment for services which is in excess of that which would be expected or normally received by an employee. *See e.g.*, *Management Search, Inc.* v. *Morgan*, 222 S.E.2d

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3/ *See also* 5 U.S.C. § 5318, which refers to "the rates of pay under the General Schedule" and 5 U.S.C. § 5335, which deals with periodic step increases for an employee who has not reached "the maximum rate of pay for the grade in which his position is placed."

4/ In this regard, it is significant that PBS is organized as a private corporation. The payment of bonuses is a common corporate practice. If Congress had intended to place limitations on the payment of bonuses -- a practice common not only to corporations but permitted in the government service as well -- it could (and presumably would) have done so expressly.

Linda C. Dorian, Esquire
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154, 157 (Ga. App. 1975); Taylor v. Errion, 44 A.2d 356, 360 (N.J. 1945), aff'd 55 A.2d 11 (1947); Kenny v. Spicer Furniture Co., 131 N.E.2d 265, 269 (Ohio App. 1954). Used in this way, a bonus is not compensation which an employee has any legal right to receive or any certain expectation of being paid. Since the literal words of Section 396(k)(10) appear to restrict only the regular compensation to which an officer or employee of PBS or NPR is entitled (i.e., only the "annual rate of pay"), it does not seem to restrict genuine bonus payments.

It should be emphasized that this conclusion is premised on the assumption that any bonus payments made by PBS would be true bonuses and not simply an increment added annually to the salaries of certain officers and employees. So long as bonus payments remain extraordinary and unusual -- based, for example, on the performance by an officer or employee of special and particularly meritorious service -- the test of "genuineness" would be met. If by practice or over time, however, certain officers or employees are led or come to assume that bonus payments of a certain amount or percentage of their annual salaries will, in fact, be made on some periodic basis, then the criteria for legitimate bonus payments may not have been met and such extra payments might violate the restriction imposed by 47 U.S.C. § 396(k)(10) (at least insofar as they caused the annual compensation of any such officer or employee to exceed the rate of basic pay established in Executive Schedule Level I). In this connection, it should be noted that even assuming the bonuses which have been given to certain PBS officers were not genuine, not all of them would have caused the salaries of the recipients to exceed the salary cap.

(b) No-interest Secured House Loan. In July, 1982, on the authority of the PBS Board of Directors, the Public Broadcasting Service made a secured mortgage loan of $125,000 to its President, in order to provide him with partial financial assistance in the purchase of a home in the Washington area. The decision to offer the loan was the result of a regular annual salary and benefit review conducted by the Compensation Subcommittee of the PBS Board.

In accordance with generally accepted accounting principles, the mortgage loan and its terms were disclosed in PBS's Fiscal 1982 certified statements prepared by Peat, Marwick, Mitchell & Co. These statements were reviewed by the PBS Audit Committee and and by the Executive Committee in a public session in Fall 1982. The Executive Committee accepted and approved the financial statements and they [illegible] subsequently distributed to all PBS member stations. The mortgage loan and its terms were once again disclosed in the draft financial statements for Fiscal 1983 which were presented to the Audit [illegible] and reviewed by the Executive Committee in a public session in [illegible] 1983.

In early 1982, PBS's President was given 90 days notice that he and his family would have to vacate the home he had rented for six years and, consequently, he had very little time in which to find suitable new housing. The Compensation Subcommittee of the Board, in its annual review of PBS's salary and benefit program, considered this matter in light of other relevant factors --the President's exe- lary performance, the state of PBS's financial health and the avai... y of working capital, compensation provided to executives in compa... le positions, current inflation, and the real estate money market.

Upon review of these facts and in view of PBS's vital interest in retaining the services of its President, the Subcommittee concluded that an interest-free secured mortgage was an appropriate way to recognize and reward his outstanding leadership and skillful direction of PBS over the preceding seven years.5/ His promissory note for the loan was secured by a second deed of trust on the purchased property and the terms of the loan require that it be paid in full within 90 days of selling the property, or two years from the date he leaves PBS, or on the 30th anniversary of the loan, whichever comes first. In accordance with normal PBS practices, all of the appropriate procedural, legal and financial steps were taken for the protection of the company, the member stations, the Board of Directers and the President, and to assure full compliance with all relevant laws.

Again, given the fact that the statutory restriction can be read most logically and persuasively as limiting the ordinary compensation which an officer or employee of PBS may receive, a long-term, no-interest loan does not constitute compensation within the meaning of the statutory restriction. In this regard, the Internal Revenue Service ("IRS") has been uniformly unsuccessful before the United States Courts of Appeals in arguing that an interest-free loan results in taxable income to the recipient of the loan and according to a recent article, "The Lid Is Off No-Interest Loans to Execs," Business Week, p. 23 (February 6, 1984), admits it has any further litigation "on hold."

At the same time, it should be noted that the IRS has taken the view that interest-free loans do result in taxable income (even though the recent reports referred to above indicate it has any further

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5/ It is not unusual for corporations to make no-interest loans to its executives for a variety of purposes, including helping them secure housing. See "The Lid Is Off No-Interest Loans to Execs," Business Week, p. 23 (February 6, 1984). In addition, it is common practice for universities to provide their presidents with homes

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litigation "on hold" id.) and that the courts which have ruled on this issue have generally stated that, even if taxable income were found, there would be offsetting interest deductions. Both of these factors could suggest some risk that a no-interest loan might be argued to constitute compensation within the meaning of Section 396(k)(10) of the Communications Act. It appears, however, that the better view is to the contrary. In the first place, although the courts have referred to the offsetting interest deduction as a justification for their holdings, they have uniformly held that no income resulted from interest-free loans. Secondly, imputed interest amounts from a no-interest loen would not be regarded as constituting part of a "rate of basic pay," which is the language used in the statutory provision.

I hope this has been responsive to your request. Unfortunately, these legal justifications may be of little lasting significance, for, if we have learned anything from our recent experience, we have learned that there is no limitation on the lagality of the laws Congress can write so long as they remain unchallenged. As you know, for example, when it was found that the no-interest loan did not violate the salary cap, Congress subsequently proceeded to amend the law specifically to prohibit any no-interest loans. The net result of that action is, ironically, to raise questions as to the legality of PBS's long-standing practice of making interest free loans to employees for purposes of educational assistance; this program has been of particular benefit to minorities and women and is part of PBS's affirmative action efforts. Similarly, if it so chooses, Congress could continue to write laws prohibiting for any reason any benefit PBS wishes to confer upon its employees. Where does one draw the line? How far can Congress pry into the business and discretion of a private corporation? Why and at what level? Medical benefits? Life Insurance? How do they differ from no-interest loans? What possible legitimate interest is served?

If you have any questions, please give me a call.

Sincerely,

Lawrence A. Horn

Lawrence A. Horn
Senior Vice President
and General Counsel

LAH/djb

attachment

ATTACHMENT

The Legislative History of the 1978
Public Telecommunications Financing Act Restriction

As originally proposed, neither the House nor the Senate version of the 1978 Act contained the salary ceiling restriction that ultimately appeared in Section 307(a) of the Public Telecommunications Financing Act of 1978. During hearings on the bill before the House Subcommittee on Communications, however, Representative Mikulski raised the issue with CPB President, Mr. Henry Loomis, as well as the CPB Board Chairman, Mr. W. Allen Wallis. Since the exchange may be critical to understanding the motivating force of the restrictive provision, it is necessary to quote the hearing record at some length.

Ms. Mikulski. . . .

Mr. Loomis, many of my constituents support both public television and public radio; however, one of their concerns, if they were here today to talk with you, would be their concern about administrative costs, and I have a question related to salaries. If I may, so that we could have ample discussion on this matter.

Information your staff provided me indicated that your annual salary is $70,000 per year. That is $4,000 per year more than a Cabinet member earns. Your executive vice president earns $64,000 a year, which is $6,500 more than a Member of Congress earns. I could go on to indicate that at 7 public television stations there are people earning over $65,000, and 10 more earning $55,000 to $64,000.

That is really more than schedule C people are making who work either for the President or who, like Michael Blumenthal, have responsibility for the Treasury Department.

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Do you think it is justified to use public money to pay salaries to public broadcasting executives in excess of what the Vice President of the United States makes, in excess of what a Cabinet member makes, of a U.S. Senator, or Member of Congress?

Mr. Loomis. I think I am in a uniquely inappropriate position to comment on this issue. I would prefer to ask our chairman.

Mr. Wallis. This is a subject which the board considers continuously, because, of course, we are aware of that kind of criticism, and in fact those specific criticisms. There are a great many other factors that enter the compensation for a job than simply the cash payment that year. There is the security of the job. The tenure, the kinds of things that may open up later, the opportunities for income on the side from lecturing and so on are all factors that enter into it.

In this job, it is provided by law that the officers should have any outside income earnings whatsoever. We have generally looked at it from the point of view of, what is the least we can pay and get the quality of people we want, and I think that we can easily justify the salaries, and we have looked at each one separately. We have not been guided by schedules and so on.

*****

Ms. Mikulski. Mr. Wallis, how would you feel about a ceiling on public broadcasting executives' salaries to bring them in line with the schedule C Federal appointees, or perhaps even a ceiling equivalent to the Vice President's salary?

Mr. Wallis. I think that would be unwise for two reasons. One is formal. We are supposed to be an independent private corporation, even though we are largely funded by the Government. That would be a clear intrusion into that principle. Even if it were not, I think it would be unwise. What we have to do is try to get people of high quality, and we will try to get them as economically as we can, and we do try to do that. Were it not for the formal reason, I think it would still be unwise.

You see what the effects of that were in the Federal system in recent years.

Ms. Mikulski. I appreciate your commenting. I must say, though, I do not share the same view. You see, I have a problem with this concept of a private corporation paid for by the public, and I wonder sometimes if we are really not into linguistic manipulation -- kidding ourselves that you are a private corporation when you are paid for by the taxpayers' funds, yet do not have the accountability an agency has.

If you are going to take the people's money, you have got to take the people's attitudes, their questions, their feelings, and so on, and when we talk about attracting quality, the fact is that you can get a Michael Blumenthal, a Juanita Kreps, a Robert Strauss to serve in the public sector, and I do not know a President yet who has had any problems attracting a Cabinet member, and the salary levels I am talking about are at that level.

Mr. Wallis. With all due regard for the prestige of this position, I would not venture to claim it is really comparable with the prestige of Secretary of the Treasury.

Ms. Mikulski. Prestige does not pay the mortgage, send the kids to college, or buy you a cup of coffee. I have two honorary Ph.D.'s and another one on the way in May, and what that will give me eventually, although it is wonderful prestige and so on, it does not give me a lower mortgage rate or anything else.

Mr. Wallis. I do not know, other than from the newspapers, about the private affairs of the three people you mentioned, although most of those three people's private affairs are pretty well aired once they go into Government, but I have the impression that they all have other resources, and in looking to fill positions like that, and the recent chairmanship of the Federal Reserve Board, they find themselves limited in large part to people who have some additional resources with which to supplement their income while serving in positions of that sort.

[Hearings on H.R. 11100; H.R. 12021; and H.R. 12073 Before the Subcom. on Communications of the House Comm. on Interstate and Foreign Commerce; 95th Cong., 2d Sess., at 516-23 (1978).]

Similar issues were raised during the subsequent appearance at the same hearings of PBS Board Chairman, Mr. Newton at the same hearings of PBS Board Chairman, Mr. Newton Minow, and PBS President, Mr. Lawrence Grossman. The questions were posed by Mr. Harry M. Shooshan, Chief Counsel of the Subcommittee, on behalf of Representative Mikulski (who was absent that day). Again, it is useful to quote the entire interchange.

Mr. Shooshan. . . .

Mr. Grossman. According to the figures provided by your staff, the Public Broadcasting Service employs two individuals, yourself and Mr. Gunn, at salaries of $69,352, more than $2,000 in excess of a member of the President's cabinet. I understand that it is the position of PBS that these funds are not Federal, since salaries are funded out of contributions from PBS member stations; however, since the stations are the recipients of Federal funds, which they are, in turn paying to PBS, this is to me a distinction without a difference, and at this point Ms. Mikulski in her question asked unanimous consent that the figures on management salaries at PBS be incorporated into the record.

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Mr. Minow. We would be glad to furnish that. Since you are talking about Mr. Grossman's salary, I would like to answer the question.

Mr. Shooshan. This is the question. How can you justify the use of Federal funds to pay salaries which exceed that paid to Cabinet members to PBS executives?

Mr. Minow. If Ms. Mikulski and the Members of Congress would like to fund PBS 100 percent, and relieve us of the responsibility of raising two-thirds of our money, we will be glad to go to a ceiling of Federal salaries. We will be glad to give you the public broadcasting system and let you run it. If you want us to run it as private citizens exercising our independent judgment, we are going to do it our way. We think it is very cheap. We are not paying him enough.

Mr. Shooshan. The followup question: What would your position be on an amendment which pegged your top PBS salary to that of a member of the President's Cabinet, or other language which would restrict your salaries to such ceilings?

Mr. Minow. We think you ought to add an amendment to the amendment to take over the responsibility for funding us.

[Id. at 738-39.]

On May 8, 1978, when H.R. 12605 -- the bill that ultimately passed the House -- was introduced, it contained the provisions suggested previously by Representative Mikulski limiting the annual rate of pay of PBS officers and employees to the basic rate of pay established for Executive Schedule Level I officers. Although the Senate version of the bill contained no such restriction, the Senate receded to the House version in conference, albeit with an amendment that precluded the necessity of a reduction in the annual rate of pay of current officers and employees. In reporting the conference bill to the House, Representative Van Deerlin, the sponsor of H.R. 12605, reported that the Senate conferees had agreed to the "House provision limiting the salaries of officers of CPB, PBS, and NPR to not more than that of Cabinet level officers, with an amendment grandfathering the salaries of current officers." 123 Cong. Rec. 13280 (daily ed. Oct. 13, 1978) (emphasis added).

PBS

December 14, 1987

Donald E. Ledwig
President and Chief Executive Officer
Corporation for Public Broadcasting
1111 16th Street, N.W.
Washington, D.C. 20036

Dear Mr. Ledwig:

This is in response to your letter of December 2 inquiring about the $30,000 bonus paid to Mr. Bruce Christensen, President of PBS, in Fiscal Year 1986.

As you are probably aware, information regarding this bonus was provided to CPB on February 24, 1987, in a letter to Richard Grefe from Carole Dickert-Scherr, Director of Personnel at PBS. That letter enclosed PBS's response to CPB's 1987 annual information survey, which disclosed the salary of PBS's President (CPB job code 1120) and the amount of the bonus paid to this official.

In FY 1986 the salary paid to Mr. Christensen was $86,200. On April 29, 1986, the Subcommittee on Compensation of the PBS Board of Directors met in executive session to consider compensation issues and at that meeting also reviewed Mr. Christensen's compensation. The confidential minutes of that meeting reflect that:

> The Subcommittee considered Mr. Christensen's performance in the office of President since May, 1984, and agreed to a special compensation award to Mr. Christensen in recognition of his distinguished service and exceptional performance in effecting the transition to new leadership at PBS and in guiding the organization smoothly through a period of great operational difficulty and financial risk in the wake of a catastropic fire, to a successful relocation of the company's offices and operations to its new facilities at Braddock Place.

As you are aware, shortly after Mr. Christensen assumed the presidency of PBS, a major fire at L'Enfant Plaza totally disrupted PBS's operations, destroyed its technical center, and forced the overnight relocation of its offices from one to nearly a dozen locations. Under Mr. Christensen's able leadership, PBS successfully weathered this crisis: operations were restored and PBS's services to its member stations maintained; special financing was obtained to enable PBS to rebuild its technical center; a satisfactory insurance settlement was reached and the financial loss to PBS minimized; new office space was secured at Braddock Place, and the PBS offices were relocated; the PBS technical center was reconstructed; and employee morale was restored. His leadership and personal efforts contributed significantly to the efficiency and economy with which PBS was able to recover from the fire.

During this very difficult two-year period, Mr. Christensen neither received nor was led to expect any extra compensation for his exceptional performance. As the April 29, 1986, minutes state, the PBS Board of Directors wished to provide Mr. Christensen with unusual and extraordinary recognition for his meritorious service and superior achievement. The form chosen for this recognition was a meritorious performance award or bonus. The $30,000 bonus that he received was not part of his basic rate of pay, but was an unusual and unexpected payment for special and distinguished acts of service to PBS during a particularly difficult time.

As CPB is aware, PBS, like other private corporations as well as federal agencies, has on prior occasions recognized exceptional performance by awarding bonuses to deserving officers and employees. Indeed, in fiscal year 1984, Linda Dorian, Vice President, General Counsel and Secretary of CPB, asked Larry Horn, then Senior Vice President and General Counsel of PBS, to explain the legal basis for PBS's decision to award bonuses to certain PBS officers in amounts which, if they had been part of those officers' regular rate of pay, would have caused their rate of pay to exceed the salary cap. In a letter dated January 30, 1984, Larry Horn explained that such bonuses are consistent with Section 396(k)(9) of the Communications Act, as amended. (A copy of that letter is attached.) CPB apparently found that explanation satisfactory.

Although PBS does not concede that the salary cap in Section 396(k)(9) is either lawful or appropriate, PBS's compensation policies comply with this limitation. After careful consideration of the statutory language and legislative history of this provision, PBS has concluded that it is intended to limit the ordinary compensation, or annual salary, that PBS officers and employees may receive, and that it is not intended to preclude, among other things, nonregular, extraordinary and unexpected payments based, for example, on a determination of particularly meritorious service. The legal rationale supporting PBS's conclusion that the payment of meritorious performance awards comports with the requirements of Section 396(k)(9) are thoroughly discussed in the Horn-Dorian letter.

In sum, there is no inconsistency between the Board's action in awarding this bonus and the salary restrictions of Section 396(k)(9). PBS executed its Certificate of Compliance with Statutory Provisions for fiscal year 1986 in good faith and believes that its compensation policies are consistent with the representations in that Certificate.

Sincerely,

Encl.

PBS

June 21, 1989

Paul E. Symczak, Esquire
Vice President, General Counsel and Secretary
Corporation for Public Broadcasting
1111 16th Street, N.W.
Washington, D.C. 20036

Dear Paul:

This letter responds to your May 16, 1989, letter inquiring about the bonus awarded to Bruce Christensen, President of PBS, earlier this year.

On March 13, 1989, the Subcommittee on Compensation of the PBS Board of Directors (the Subcommittee), which is charged with responsibility for determining the compensation and benefits of the PBS President, met in executive session to review Mr. Christensen's performance and compensation. At that meeting the Subcommittee reviewed, among other things: Arnold & Porter's April 21, 1980, opinion that the statutory salary cap does not restrict the payment of bonuses in excess of the cap so long as they represent nonregular, extraordinary, and unexpected payments based on a determination of particularly meritorious service; applicable PBS policies; then PBS General Counsel Larry Horn's January 30, 1984 letter to then CPB General Counsel Linda Dorian, which explains the legal rationale supporting the award of bonuses given the statutory salary limitation; PBS Board Chairman Alfred R. Stern's December 2, 1987, letter to Donald E. Ledwig, CPB President, explaining the reasons a bonus was awarded in 1986 to the PBS President, and Mr. Ledwig's January 27, 1988, response, which found "PBS's explanation . . . not inconsistent with the law;" and information about the federal incentive cash awards programs.

After reviewing Mr. Christensen's performance and accomplishments and after discussion, the Subcommittee unanimously approved a special meritorious bonus award of $20,000 for his extraordinary contributions and leadership. In a memorandum dated March 20, 1989, from the Subcommittee to Mr. Christensen, informing him of the award, the Subcommittee described in detail the specific contributions that merited the bonus award. It said:

Public Broadcasting Service
1320 Braddock Place Alexandria VA 22314-1698 (703)739-5000

"As you are well aware, PBS's annual budgetary process has sometimes been the subject of discord between PBS and some of its member stations. Under your leadership and guidance, the budgetary process was remarkably improved this year, and the stations, the Subcommittee on Budget and the Executive Committee have uniformly praised both the process adopted and you and your staff for transforming what was formerly a disagreeable necessity into a productive exchange between PBS and its member stations that will serve to advance the services of both PBS and public television.

At 1988's Programming Meeting in San Francisco, again under your leadership and guidance, PBS introduced the public television community to PBS's National Program Service Strategic Plan, which proposed significant changes and improvements in the management of the National Program Service (NPS) to assure the NPS's success and competitiveness in the future. Since that time PBS has begun to implement parts of that plan in cooperation with public television producers. Those efforts are universally recognized within public television as having been the critical first steps to prepare public television to operate successfully in a dramatically changing media environment. All of public television is indebted to you for having the foresight and fortitude to challenge the industry to face its future.

In 1986, again under your leadership, PBS approached the Corporation for Public Broadcasting and proposed that CPB challenge the public television stations to create a new programming fund, a fund that would be available to finance the production of high visibility, prime time series, unencumbered by a bureaucractic approval process. CPB and the stations both agreed, and since that time have

> together pooled $24 million to fund outstanding signature public television programs, including Bill Moyers' acclaimed Joseph Campbell series, The Power Game, Columbus and the Age of Discovery, and the Philippines. CPB has agreed to renew its $5 million commitment in FY 1990, as have the stations. You can be justifiably proud of your role in bringing the benefits of such superior programs to the American public."

Mr. Christensen's annual salary at the time the bonus was awarded was the maximum rate permitted under Executive Level I.

In your letter you express interest in our view of the legal basis of bonus awards in light of the statutory salary limitation. As you know, PBS has responded to similar inquiries from CPB twice in the past. The legal rationale supporting PBS's conclusion that the payment of meritorious performance awards comports with the requirements of Section 396(k)(9) was thoroughly discussed in the Horn-Dorian correspondence summarized above, and is not repeated here. In both previous instances CPB did not dispute PBS's conclusion that Section 396(k)(9) "is intended to limit the ordinary compensation, or annual salary, that PBS officers and employees may receive, and that it is not intended to preclude, among other things, nonregular, extraordinary and unexpected payments based, for example, on a determination of particularly meritorious service." See Stern December 14, 1987, letter. The statutory language concerning the annual rate of pay has not changed since those letters were written.

As noted in the materials referred to above, the Subcommittee also considered federal amployment practices, which permit the award of incentive cash bonuses that exceed applicable salary caps to federal employees, including Executive Schedule employees. See 5 C.F.R. Section 451.101 et seq. Those awards are made for non-recurring special acts or service contributing to improving government operations. 5 C.F.R. 451.103. I think you would agree that if federal employees may receive cash bonuses in excess of statutory salary restrictions for special meritorious acts, it follows thet PBS employees may be awarded cash bonuses for special meritorious service consistent with statutory limits on the annual rate of pay.

Paul E. Symczak, Esquire
June 21, 1989, Page 4

In your letter you also say that "the award of bonuses to Mr. Christensen has become a more routine and commonplace practice . . . than it was in 1985." The Subcommittee minutes and memorandum, however, make it clear that the bonus awarded was neither expected, routine, nor commonplace. Instead it was an unusual and unexpected award for specific, distinguished acts of service to PBS.

As you point out in your letter, Arnold & Porter opined that extraordinary and unusual bonus payments satisfy the test of "genuineness" because they are not simply an annual increment to salary. That reasoning as a matter of law would support bonus awards even in successive years so long as they were unexpected and based on particularly meritorious performance. As you know, Mr. Christensen's only other bonus during his five years as PBS's CEO was awarded three years ago.

Like CPB, the Subcommittee and PBS are sensitive to the policy considerations as well as the legal issues underlying the salary cap requirement. Those concerns have led the PBS Board to consider its actions carefully so as to ensure that PBS's policy on meritorious service awards comply with the limitations imposed by Section 396(k)(9) of the Communications Act, as amended.

Without addressing the question of whether the salary cap is either lawful or appropriate, PBS executed its Certificate of Compliance with Statutory Provisions for fiscal year 1989 in good faith and believes that its compensation policies and actions are consistent with the representations in that Certificate.

Cordially,

Paula

Paula A. Jameson
Senior Vice President,
General Counsel & Secretary

cc: PBS Subcommittee on Compensation
Ted R. Capener
Robert E. James
Robert F. Larson
E. William Henry
James B. Lockhart
bcc: B. Christensen
N. Mahrer
B. Wolfe
E. Sass
C. Dickert-Scherr

CORPORATION FOR PUBLIC BROADCASTING

Donald E. Ledwig
President and
Chief Executive Officer

January 27, 1988

Alfred R. Stern
Chairman of the Board
Public Broadcasting Service
993 Fifth Avenue
New York, New York 10028

Dear Mr. Stern:

This is to follow up on my letter to you of December 2, and your reply to me of December 14, 1987, concerning PBS's bonus payment to its President in FY 1986 in an amount that caused his total compensation to exceed the statutory pay cap in effect for that year. I asked for PBS's explanation of the consistency between that payment, and PBS's certification to CPB that it would be in compliance with the statutory ceiling during FY 1986. You have responded that the PBS Board's Subcommittee on Compensation reviewed the President's performance over a two-year period and agreed to make "a special compensation award" to him, to recognize "his distinguished service and exceptional performance in effecting the transition to new leadership at PBS and in guiding the organization smoothly through a period of great operational difficulty and financial risk in the wake of a catastrophic fire, to a successful relocation of the company's offices and operations to its new facilities at Braddock Place."

In addition, you state that the bonus was "unexpected," "unusual" and "extraordinary," a recognition of "special and distinguished acts of service to PBS during a particularly difficult time." Based on these facts, you conclude that the bonus did not violate the statutory pay cap, which PBS interprets as applying only to "ordinary compensation, or annual salary," and not to "nonregular, extraordinary, and unexpected payments."

CPB has reviewed the law and its history and finds that PBS's explanation is not inconsistent with the law. While we find the law, as well as its legislative history, to be ambiguous on the issue of the elements of compensation to be included in computing the "annual rate of pay" to which the ceiling applies, we have found nothing that would conclusively preclude PBS's characterization of this bonus payment. On the other hand, the terms and history of the law provide evidence to suggest that the PBS interpretation is correct, although, again, the evidence is not conclusive.

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In making this determination, CPB has relied upon PBS's characterization of the bonus in question, and the circumstances cited as justification for the bonus. If PBS were routinely to award bonuses in excess of the pay cap as supplemental salary payments, whether or not they were intended to thwart the limitations of the statutory ceiling, CPB would review the matter in a different light. Similarly, if the circumstances justifying bonuses in excess of the pay cap were less drastic than those cited, CPB might reach a different conclusion. 'Extraordinary' performance alone would not be sufficient grounds to justify a bonus exceeding the pay cap, in part because it is an inadequate standard to prevent the awarding of bonuses on a routine basis in violation of the pay cap. For many positions at CPB, PBS and NPR, "extraordinary performance" is a requirement of the job.

Thank you very much for your prompt attention to this matter, and for your thorough response.

Sincerely,

Donald E. Ledwig
President and
Chief Executive Officer

cc: Bruce Christensen

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